First Session—Twenty-sixth Parliament

1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill C-74 intituled: "An Act respecting the Department of Industry".

The Honourable SALTER A. HAYDEN, Chairman

THURSDAY, JULY 18, 1963

WITNESS

The Honourable C. M. Drury, P.C., Minister of Defence Production.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29304-3—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine
Baird
Beaubien (*Bedford*)
Beaubien (*Provencher*)
Bouffard
*Brooks
Burchill
Campbell
Choquette
Connolly (*Ottawa West*)
Crerar
Croll
Davies
Dessureault
Drouin
Emerson
Farris
Gershaw
Gouin
Hayden
Horner
Howard
Hugessen
Irvine
Isnor
Kinley
Lambert
Leonard
*Macdonald (*Brantford*)
McCutcheon
McKeen
McLean
Molson
Monette
O'Leary (*Carleton*)
Paterson
Pearson
Pouliot
Power
Pratt
Reid
Robertson (*Shelburne*)
Roebuck
Smith (*Kamloops*)
Taylor (*Norfolk*)
Thorvaldson
Turgeon
Vaillancourt
Vien
Willis
Woodrow—49

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, July 17th, 1963:

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Macdonald, P.C., seconded by the Honourable Senator Vaillancourt, for second reading of the Bill C-74, intituled: "An Act respecting the Department of Industry".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Macdonald, P.C., moved, seconded by the Honourable Senator Vaillancourt, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

29304-3—1½

REPORT OF THE COMMITTEE

THURSDAY, July 18, 1963.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-74, intituled: "An Act respecting the Department of Industry", have in obedience to the order of reference of July 17th, 1963, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, July 18, 1963.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 A.M.

Present:—The Honourable Senators: Hayden, *Chairman;* Aseltine, Brooks, Choquette, Croll, Gershaw, Horner, Hugessen, Irvine, Isnor, Lambert, Leonard, Macdonald (*Brantford*), McCutcheon, Molson, Paterson, Pearson, Power, Pratt, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Willis, and Woodrow. 24.

In Attendance:—Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, the Senate, and the official Reporters of the Senate.

Bill C-74, An Act respecting the Department of Industry was read and considered.

On Motion of the Honourable Senator Croll it was Resolved to Report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

The Honourable C. M. Drury, P.C., Minister of Defence Production, was heard in explanation of the Bill.

It was Resolved to report the Bill without any amendment.

At 10.45 A.M. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, July 18, 1963.

The Standing Committee on Banking and Commerce, to which was referred Bill C-74, respecting the Department of Industry, met this day at 9.30 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 600 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: We have with us this morning the Minister of Defence Production, Honourable C. M. Drury, who, it is rumoured, will be the minister under this bill as and when the bill becomes law. I am going to ask him to give in a summary way an explanation of the purposes of the bill and then we will be ready for questions.

The Honourable C. M. Drury, Minister of Defence Production: Mr. Chairman, honourable senators, having sat in the gallery on a number of occasions during which this bill was being debated in the Senate it is quite clear to me that most senators are about as familiar as I am with the purposes of the bill. As to whether the purposes are good or bad there seems to be some difference of view. Briefly, the main purpose of the bill is the formation of a new Department of Industry, and the object of the formation of a new Department of Industry is to provide in Canada within the federal Government a focus, a centre, to which manufacturing industry in Canada can look for assistance and advice and which will serve to point up the importance which the present Government attaches in the current economic context to the accelerated growth and economic health of manufacturing industry in Canada.

I do not think I need to emphasize the importance of this accelerated growth and economic health in the light of the very substantial unemployment from which we are currently suffering. A recognition of the fact that that segment of the economy which is likely to be productive of the largest number of new job opportunities in the coming years, and which will provide the quickest and most effective way, is through an increase in the skill and efforts of the manufacturing industry in Canada. The purpose of the bill is to provide a more intensive, a more effective means of assisting manufacturing industry in Canada than has been the case in the past under efforts initiated principally in the Department of Trade and Commerce.

The present Minister of Trade and Commerce, Honourable Mitchell Sharp, shares this view and has so stated in the House of Commons. I have not got the *Hansard* quotation here but I will have it later and be prepared to read it to you to make clear that he shares this view, that he would wish to concentrate his activities, his efforts, in the very important field of increasing our exports, particularly exports of manufactured goods. In order to be free to do this he would welcome the separation from his present Department of Trade and Commerce of those elements which are concerned with domestic manufacturing and domestic sales.

There is no question but that there will have to be the closest possible working relationship between the two departments as, indeed, there will have to be between the new Department of Industry, the Department of Defence Production, and the Department of Finance. But this is a characteristic which is common to any good government department, and I would hope that the new department would be no less successful than others have been in the past. The Department of Industry will be a relatively small department, and its function will not be to engage in any manufacturing operation *per se* but, having first acquired a detailed knowledge of our manufacturing industries, to endeavour to evolve ideas which will be helpful either to the industry itself in its operations or in its rationalization, and to produce recommendations for action by other government departments to assist manufacturing industry in Canada.

Those are the main objectives, Mr. Chairman, and I would be glad to answer questions in respect of detail.

The CHAIRMAN: Are there any questions?

Senator PEARSON: Mr. Minister, I would like to ask a question. How long do you think it would take before this Department of Industry would become an effective means of promoting industry in this country?

Hon. Mr. DRURY: I would suggest it could become effective as soon as it is formed, particularly because of its close relationship with the Department of Defence Production, where there are now men with a great deal of knowledge of certain of our manufacturing industries; so that the groundwork, or the framework, in a sense, for a large part of the Department of Industry, already exists with the people in it.

Similarly, in the Department of Trade and Commerce there are now, under the Assistant Deputy Minister, Mr. Barrow, staff who are familiar with a number of segments of the manufacturing industry, other than those in the Department of Defence Production. So that the mere passage of the law will serve not only to bring this legally into existence, but a large part of the apparatus is already there and, in a sense, working in this direction. I would hope that by the fall one could expect to get some kind of effective results out of the new department.

Senator IRVINE: May I ask, what is the reaction of the smaller provinces to the idea of a new department? What effect will it have on the smaller provinces like my own, the province of Manitoba, where we have a Department of Industry right now that has been working very hard?

Hon. Mr. DRURY: I would hope the effect would be entirely beneficial. The province of Manitoba is very active indeed endeavouring to establish new industries within the province. It is seeking these either abroad or from other provinces. In so far as they are sought from abroad, the province of Manitoba finds itself in competition with other provinces with like ideas. In so far as it is seeking new industries from other provinces, and trying to lure them away from other provinces, the competition is, needless to say, even keener.

It would be the plan of the Department of Industry to work very closely with the provincial departments of industry, and to try to avoid, where possible, what might turn into cut-throat competition. There have been some cases, I think, where some provincial proposals have been rather more competitive than economic in the long run; and I would hope that on a collaborative basis uneconomic competition in this field could be avoided.

Senator IRVINE: There would be no chance of interference?

Hon. Mr. DRURY: Interference, one would avoid.

Senator LAMBERT: May I ask if there is any prospect of a survey by the department which might be expected to have a stimulating effect on industrial activities throughout the country?

The CHAIRMAN: Do you mean the designated areas?

Senator LAMBERT: Yes, the designated areas.

Hon. Mr. DRURY: The "designated area" section of the bill contains provisions designed to ascertain those areas in Canada suffering from chronic, persistent, high-level unemployment, which would be limited in number, and to provide economic incentives to manufacturing industry to locate in those areas. The purpose of this is to relieve the higher level of unemployment than exists elsewhere.

Senator MCCUTCHEON: What type of incentives have you in mind?

Hon. Mr. DRURY: The incentives, at the moment, are principally contained in the budget resolutions; namely, accelerated depreciation and the tax holiday of three years. The budget resolutions have not yet been adopted by the House of Commons, nor have they come to the Senate; but, at the moment, these are the two main incentives.

Senator MCCUTCHEON: I do not want to discuss the budget resolutions, but I may put it this way: In your experience, do you believe that the mining industry, for example, has been stimulated by the three-year tax holiday it has enjoyed; that we have mines today that we would not otherwise have had?

Hon. Mr. DRURY: I do not think that probably we have any new mines we would not have had; but perhaps we might have some mines that might not otherwise still be in operation.

Senator MCCUTCHEON: The tax holiday only applies for the first three years after going into production.

Hon. Mr. DRURY: Yes.

The CHAIRMAN: Three years plus six months.

Senator LAMBERT: What about gold mines?

The CHAIRMAN: In the case of gold mines you have emergency assistance.

Hon. Mr. DRURY: In so far as mines are concerned, their location is related not to the existence of social capital, but a body of ore. Really, the designated area provisions look to the co-operation of manufacturing industry rather than the primary extractive industry in areas where there is a large pool of surplus manpower.

Senator MCCUTCHEON: Let me put it this way: Do you feel that the waiving of income tax for three years is a sufficient incentive for a manufacturing industry to go to a place that would otherwise be uneconomic?

Hon. Mr. DRURY: Here, senator, is a question of balance, as you well know. It depends in part on the type of manufacturing industry. In an isolated area, remote from centres of communication, an industry which had in respect of its cost of production a high expense ratio for transportation, the incentives would not make it economic. But one remote from centres of transportation, or cheap transportation, which had a very low ratio of transportation costs could well afford this.

There are many factors affecting different types of manufacturing industries; and, similarly, the areas of surplus manpower vary greatly in the reasons for which they may be in a surplus situation, and I am certain that the provision of the accelerated depreciation and tax holiday, in itself, will not be enough to cover all the circumstances. If it were, I suppose there would be no reason, really, for this Area Development Agency.

Senator MCCUTCHEON: I was coming to that. You have these incentives in the budget resolutions which, presumably, will go into effect in due course.

What other incentives do you contemplate? I am suggesting those incentives, in themselves, are not enough.

The CHAIRMAN: What has been running through my mind is that when you are talking about a tax holiday and accelerated depreciation, the foundation upon which they rest and which gives them any value they might have, would be that the business is going to be an economic operation. Otherwise a tax holiday or accelerated depreciation does not mean anything.

Senator McCUTCHEON: Unless you make money, they do not mean anything.

The CHAIRMAN: If you are going to locate industry in a depressed area you are going to subsidize it or it is going to be economic.

Senator LAMBERT: Does not the point arise as to the extent to which you are willing to consider social considerations, such as unemployment?

The CHAIRMAN: I understand that is the area Senator McCutcheon was going into now. He wanted to know what inducing factors you might have in mind other than accelerated depreciation and a tax holiday.

Hon. Mr. DRURY: If I knew what all the answers were, I do not think we would need this agency.

The CHAIRMAN: That is right.

Hon. Mr. DRURY: It is the function of this agency to examine the problems and to recommend solutions to the Government. The only thing I am aware of is that there is a vast range of problems. I might comment on your remark that the operation has in itself to be economic. I am not sure that this is entirely so. If a company which is making money were to establish a branch operation in one of these areas which would otherwise be uneconomic they could benefit in the rest of their operation from the accelerated depreciation and tax holiday. This is a form of subsidy, but I agree the whole corporate operation must be economic or profitable to derive any advantage from this.

Senator McCUTCHEON: You have no specific thoughts now as to what other incentives might be used?

Hon. Mr. DRURY: Not at the moment, no.

Senator HUGESSEN: Senator McCutcheon's question does seem to indicate a necessity for something of this kind.

Senator MOLSON: Might I ask the Minister if there is any thought at some future time that this proposed new department might be merged with the Department of Defence Production?

Hon. Mr. DRURY: This would seem to make good sense. As I think most senators are aware, the Glassco Commission has recommended that the Department of Defence Production have its operations reviewed with the ultimate object of turning it into the Government supply agency, somewhat similar to the General Services Administration in the United States. The review to ascertain the most effective method of accomplish this objective is now under way.

Senator McCUTCHEON: I am sorry, I didn't get that.

Hon. Mr. DRURY: The implementation of the Glassco recommendation that the Department of Defence Production become the general supply agency for the whole Government has now been accepted in principle, and a committee is now working out the steps required to give effect to this. This in itself will call for quite a substantial modification of the Department of Defence Production, as it now exists, and rather than do this simultaneously with the merging of new activities in relation to manufacturing industry, it would seem to make more sense to set up a new Department of Industry, at least initially, alongside and closely related to Defence Production which is undergoing modification, and look at the question of merging these in the future.

Senator McCUTCHEON: You do contemplate that there might eventually be a merger of the two. You have already in the Department of Defence Production people who are knowledgeable about the aircraft industry and the electronics industry.

Hon. Mr. DRURY: That is right.

Senator McCUTCHEON: It does not seem logical to set up another group who specialize in the automobile industry because there is always overlapping.

Hon. Mr. DRURY: There would be no duplication in so far as the body of knowledge and talent in relation to industry as it now exists is concerned. So far as the Department of Defence Production is concerned it will not be duplicated. The services of these men will be used.

Senator McCUTCHEON: How do you contemplate proceeding to acquire a detailed knowledge of manufacturing industries in Canada?

Hon. Mr. DRURY: There are two ways. The first is by taking somebody who is green and knows nothing of it and teaching him by training, by visits and by discussion, or we can find someone who has been in a particular industrial activity and engage him in the Government service. Sometimes one method will be adopted and sometimes the other.

Senator McCUTCHEON: Couldn't it proceed possibly in another way; the manufacturing industries would want to contact you with their problems rather than you contacting them?

Hon. Mr. DRURY: Well, as I say, sometimes it will be one method and sometimes it will be the other. You may have the situation in our offices of having a parade of people come in and sometimes you will have to take the initiative and go out. But it will sometimes be one way and sometimes the other.

Senator HUGESSEN: I should imagine a good deal of statistical information about industry is available already from the department of statistics.

Hon. Mr. DRURY: Most of the statistical information one now has, and in this sense there is existing a body of knowledge with which these new people have to become familiar or the existing ones have to become familiar. This, however, has to be related to the specific problems.

Senator HUGESSEN: But you don't start from zero.

Hon. Mr. DRURY: That is correct.

Senator LEONARD: I take it from what you said there will be a certain amount of transference of staff from the Department of Defence Production to the new department.

Hon. Mr. DRURY: Perhaps because there is a single Minister of Defence Production and of Industry it will not be necessary to transfer staff from one to the other. They can work alongside each other no matter which department they are in, but there will be some transference of staff from the Department of Trade and Commerce to the new Department of Industry under the Transference of Duties Act.

Senator LEONARD: May I ask whether in doing that you were contemplating the deputy minister, and so on?

Hon. Mr. DRURY: From the Department of Trade and Commerce it would be the whole staff, starting with the assistant deputy minister and the whole office organization in relation to domestic commerce, with the exception of weights and measures, which is a regulatory function carried out by Trade and Commerce, and is now under the assistant deputy minister for Trade and Commerce. Weights and measures will remain in the Department of Trade and Commerce, because it has more relevance to foreign trade than to domestic trade.

Senator LEONARD: Has there been anything approaching an approximation arrived at yet in connection with next year's estimates?

Hon. Mr. DRURY: Not yet.

Senator LEONARD: Is there any suggestion as to what the cost of the new department might be?

Hon. Mr. DRURY: I would not want to make a horseback guess other than to say that it should be modest. One has to get at least the basis of an organization before one can make any accurate estimates of what will be required.

Senator CROLL: Mr. Minister, why should it be modest if you have a job to do? I cannot understand the modesty in this department. There is a department here setting out to do something that needs to be done. Why should we suggest that they be modest; it may be actually very expensive. It may cost a great deal of money to accomplish that which you set out to accomplish. At the moment you do not know and nobody suggests you ought to know, and I cannot see why you should plead modesty on that ground. I think doing the job is more important.

Senator HUGESSEN: Senator Croll, I think the word "modesty" was used in contradistinction to wastefulness.

Hon. Mr. DRURY: I may say, Senator Croll, that the numbers that have been suggested will be rather limited when you compare them for instance with the staff of the Post Office or the Department of Public Works or any other operating department. This will not be an operating department in the sense of performing operations for the federal Government. The Privy Council office is very modest in cost, but I don't think anyone would regard it as modest in its accomplishments.

Senator THORVALDSON: Mr. Minister, I think we all realize that the department will have to feel its way, but apropos of Senator Croll's remarks, he said something like this, "Well, the department has things it needs to do, now let us get on with the job." The problem some of us have is trying to get some specific information or specific details as to just what happens from applying the incentives in other legislation. Now what are the specific details of the operation that this department will do for industry? If I may continue a little further, I am thinking of the job done by the various departments of industry in the provinces. As I understand it, for instance, in my own province of Manitoba, the Department of Industry has been highly effective in getting industry to come into Manitoba. There have been various surveys by that department as to the products that can be manufactured in Manitoba, and to ascertain the market, and so on, and then going to the head office of firms in Ontario and Quebec and saying, "Now, we think you should locate in Manitoba. We are in a position to give you assistance to that end". They have done that very effectively. My point is this: Is there something equivalent to that that this department expects to be able to do in the wider field?

Hon. Mr. DRURY: Obviously, all these steps you have outlined will be applicable in respect of Canada as a whole, but looking outside, rather than within Canada, this will have to be done. Secondly, there is now a wide range of manufactured imports into Canada, and in a number of cases there are distinct possibilities for the substitution of some of these manufactured imports by manufacturing or processing in Canada. This is one of the tasks to which the Department of Industry should address itself. It will have to find ways and means of manufacturing in Canada items which we are now importing.

The recent establishment of the Volvo plant in Halifax is a case in point. It is the beginning of the manufacturing in Canada of items, namely, small cars, which hitherto had to be imported in whole.

Now, the Department of Industry should see where the possibilities lie, and where the volume is sufficiently great of these imported goods to make manufacturing in Canada an economic possibility should they endeavour to bring about such manufacturing in Canada.

In some instances I would hope, as a consequence of studies made by the Ecsonomic Council of Canada, that advice could be given to industry as to the likely direction in which its future lies, and to provide assistance, mostly in the way of advice, to industry as to how best to take advantage of the changing situation.

Another way will be in relation to changes in the tariff structures and in the trading patterns of the world to try to assist manufacturing industry in Canada to adjust to these. Now, I suspect that some time in the future we may require the kind of financial adjustment assistance for which provision has been made in the United States and elsewhere to enable industries to get over the initial hump of adjustment to a radical change in the tariff structure. We may face some of that in Canada. It will be the task of the Department of Industry to anticipate these, and to take steps to see that this adjustment assistance is provided.

Senator LAMBERT: That would be in the way of advice to your Government, I suppose?

Hon. Mr. DRURY: That is right.

Senator CROLL: Mr. Minister, we are all, I think, unanimously happy that Volvo decided to establish in this country, and particularly in the Maritimes. Was there any inducement there beyond the inducement that you have outlined here today? If you do not wish to answer this question, then do not. I am just looking for knowledge. I was thinking of it as a matter of general information. Were any inducements given to them that you did not outline here today?

Hon. Mr. DRURY: That have not been outlined today? There was, I think—although I am not sure of this—some capital assistance.

Senator CROLL: Capital what?

Hon. Mr. DRURY: There was some capital assistance provided by the Industrial Estates in the province of Nova Scotia.

Senator MCCUTCHEON: The main incentive given by the federal Government was the progressive rebate of duties.

The CHAIRMAN: It is the "made in Canada" ruling.

Senator MCCUTCHEON: Well, it went a little further than the "made in Canada" ruling.

Senator PRATT: Will there be senior officials assigned to particular areas of Canada, or will it be of general application?

Hon. Mr. DRURY: It will be functional rather than geographical. That is, if there is an industry which is located entirely in one sector of Canada then an official concerned with that particular industry will be assigned to a region, but this is rather unusual. The relationship would be to industries rather than to specific provinces.

Senator PRATT: What about the problems of various areas? How will they be given special attention in the organization?

Hon. Mr. DRURY: In so far as the areas are distressed areas, they will be the preoccupation of the Area Development Agency, but in so far as an industry is national in its operations there will be no particular reference to specific areas. I suppose really your question is: How does Prince Edward Island, for instance, succeed in getting a larger share of manufacturing industry? To whom would it turn? Is that the kind of question you had in mind?

Senator PRATT: I was thinking—

The CHAIRMAN: You are thinking of Newfoundland.

Senator PRATT: Yes; first, anyway.

Hon. Mr. DRURY: One would expect that the main effort in establishing any preferential treatment for Newfoundland over some other province in Canada would come from the Newfoundland economic development group. They will be the ones who will display the initiative. It will not be the task of the Department of Industry as such, except in relation to these distressed areas or designated areas; it will not be the job of the Department of Industry as such to play favourites, or to say that one area or one sector of Canada should be preferred to another. The initiative for this, one would hope, would come from the provincial authority concerned with it.

Senator PRATT: I do not like the term "playing favourites". I was thinking of the needs that exist in an area, and which are peculiar to that area, the troubles which that area has, and so forth, and which may have more application in that particular area than in another.

Hon. Mr. DRURY: There is the Atlantic Development Board whose function it is to point up and recommend steps to meet the needs of the Maritime provinces, including Newfoundland. I would hope that the Deparment of Industry and, particularly, the Area Development Agency will be working closely with the Atlantic Development Board. The Atlantic Development Board would be the agency to recommend steps to meet the specific needs of these areas—the special needs. One of the main objectives of the Department of Industry, as I outlined earlier, is the establishment of an increasingly healthy industry in Canada, and the people who are going to make this work are the industrialists themselves and they are animated mostly, I suggest, by the urge or the impulse and the necessity of being economically viable and perhaps the social needs of certain areas of Canada do not weigh too largely in their considerations as to what is going to be economically viable. It is the Department of Industry's task to make this economic viability as much a reality and as easy to achieve as possible. If there are special needs of a special area of a social character I do not think one should look to the industrialists of Canada to be preoccupied with them but, rather, some other agency of Government.

Senator ISNOR: Mr. Chairman, I would like to ask Mr. Drury to enlarge on Part II in regard to area development. He has before him the unemployment figures of various sections of Canada, and I was wondering if this would be a main factor in the appointment of a Commissioner for Area Development. Take for instance Nova Scotia with a very large unemployment figure at the present time. Would you think that Nova Scotia would rank number one—and Newfoundland, of course, is another?

Hon. Mr. DRURY: One has to distinguish between general economic development and specific measures to take care of unemployment. There is in Canada a large number of national employment service offices and each such office is responsible for a specific territory. Generally speaking the territory for which that office is responsible is a labour area of some size, which constitutes a labour pool. This is really an area where people live and can work. That means the residents are within commuting distance of their work.

It is not going to help at all a man in Glace Bay who is unemployed if a large new industry is established in Halifax. He and his family are in Glace Bay and this is where he has lived all his life and where he is unemployed. The existence of job opportunities in Halifax are not of much more assistance to him than the provision of job opportunities in Toronto, Winnipeg or Vancouver. What he wants and what the area development agency would like, is the providing of job opportunities for him of which he can take advantage without changing his domicile. Therefore, I would anticipate that the Area Development Agency

would devote its attention to relatively small areas of unemployment, and not whole regions.

Senator ISNOR: What do you mean by "small"?

Hon. Mr. DRURY: The smaller area? The size of the area would be roughly one where a man could live and work; and the existence of adequate job opportunities 70 miles away really is of no help to him at all.

Senator ISNOR: Yes, I think you have a very good example. You are familiar with the situation, I think, in the case of Fairey Aviation Company, which was started in Dartmouth. It meant the employment of men who were living as far as 25 to 35 miles away and they had to drive in and out. It was a wonderful help to thousands of employees living along the Eastern Shore. That is what I had in mind. Do you have a similar size area in mind?

Hon. Mr. DRURY: About that size, that is correct. There would probably be some elasticity about this. If you take too small an area which was geographically or geophysically disfavoured, but where with a few more miles there would be a satisfactory geophysical sufficiency of manufacturing requisites—water and such things—this area should probably be extended to include this more desirable area. However, generally speaking, it will be an area which will be small enough for a man both to live and to work in. These would be the designated areas.

One has to limit them in number if incentives are going to mean anything. If the whole of Canada were to be declared a designated area, then this would produce no improvement at all in the areas that are distressed. Therefore, they must be limited. My estimate would be that perhaps the designated areas should not cover more than about, at the outside, 10 per cent of the total labour force in Canada. This would be 10 per cent of the labour force which would be favoured, where incentives would be provided to ameliorate their situation. If one goes much beyond that, the incentives become meaningless.

Senator ISNOR: The second part of my question is in relation to the character of the commissioner. Do you mean to appoint a commissioner for that particular small area?

Hon. Mr. DRURY: No, there will be a commissioner for all the designated areas, for the whole of Canada.

Senator ASELTINE: Have you one in mind, any person in mind for that job?

Hon. Mr. DRURY: I have had suggested to me some names, yes, sir.

Senator ASELTINE: From outside or inside?

Hon. Mr. DRURY: Some from outside and some from inside.

Senator CROLL: That is really a fair answer.

Senator HORNER: In regard to these industrial areas, would you consider that the brewing and distilling industry, which is carried on in some areas, necessitates support from the Government? Are they going to be harassed by the Government? You spoke of training someone, I think someone from the industry. Now, I understand that the brewing companies think that is impossible, as theirs is one of the most carefully guarded secrets in the world. Would you employ spies or what would you do to get the secret if you want to give assistance to the brewing industry?

Hon. Mr. DRURY: Fortunately, the brewing industry is so prosperous that it would be regarded as having a very, very low priority in connection with requirements for assistance.

Senator HORNER: You speak of assistance to make industry more prosperous.

Senator LAMBERT: The emphasis in this bill has been placed very definitely by us and also by the witness himself, on the development of secondary

industry as a means of creating employment. Would you regard what we consider a basic industry, the very primary industry, as coming within the purview of the department—that is, agriculture, mining, fishing, forestry?

Hon. Mr. DRURY: There already is a specific federal Government department concerned with each of our primary industries. There is the Department of Agriculture, whose preoccupation is the primary agricultural operation. The higher forms of food processing, which do not come within the ambit definitely of the Department of Agriculture, one would expect to occupy the attention of the Department of Industry.

In so far as wood products and forest products are concerned, there is the Department of Forestry which is concerned with the primary growth and extraction of wood. In the higher forms of the processing and manufacture one would expect the Department of Industry to come in.

There would be a break or line of division between the Department of Industry and the other department, where one will cease its interest and the other will take over.

The same thing occurs in regard to the Department of Forestry and the Department of Mines. The Department of Mines is concerned with mining, the extraction and crude refining itself, but is not concerned with steel making or steel products. There would be a line drawn there, in a similar way.

Senator LAMBERT: I think that classification is the natural one. I might mention agriculture, which you referred to a moment ago. It has been pretty defintely recognized within the last six months that agriculture has a definite relationship also to the Department of Trade and Commerce, especially where cereal grains are concerned. What I have in mind in asking this question is the general policy of international trade, really coming to bear closely on these basic industries rather than on secondary industries—I mean, directly—and in other words the secondary industry that you are trying to develop to create employment can be related very definitely, it seems to me, to the conditions that exist in primary industry.

The CHAIRMAN: What you are pointing out would lead to the conclusion that the greater development of secondary industry would be necessarily domestic rather than in the export field.

Senator LAMBERT: That is so. I think the export phase of it is very important too; but I do think that the success and development of secondary industry in a good many cases will depend pretty largely on the development of the natural resources of this country in the form of primary industry.

Mr. DRURY: That is very true; but we have reached a much higher degree of sophistication, perhaps, in respect of our extraction or production of the primary industries than we have in processing. One would hope the departmental minister would be successful in encouraging a much higher degree of processing of the products of the primary industries.

Senator LAMBERT: I understand.

The CHAIRMAN: Any other questions?

Senator PATERSON: Mr. Chairman, this question may have been asked before, because I came in late. Would it be the intention of the Department of Industry to encourage the finishing of the raw materials of Canada? For instance, if it improved the sale of iron ore from Newfoundland by pelletizing it, and if that would improve the markets and enlarge the sale, is the department prepared to finance it?

Mr. DRURY: Well, your question was specifically, would the department be interested in helping to finance. It would not be the function of this department to provide financing for a new industry. There are a whole lot of government agencies, including the Industrial Development Bank, the Department of

Finance itself, and other instruments we have, such as the Coal Board, all of which have machinery and procedures for providing financial assistance. The job of the Department of Industry, rather, would be to look at the problem and to see that perhaps one of the existing solutions were applied to this, rather than try to start up a separate operation.

Senator PATERSON: And to recommend or suggest?

Mr. DRURY: That is so. I hope we do more than recommend.

Senator MCCUTCHEON: Has the minister referred to Mr. Sharp's statement in the house?

The CHAIRMAN: He has it here.

Senator MCCUTCHEON: Could we have that?

The CHAIRMAN: Yes.

Senator MCCUTCHEON: I take it that secondary industry in many cases might be encouraged in this country only if it was able to export as well as to serve the domestic market?

Mr. DRURY: That is correct. There is no doubt about it. There must be a tremendous emphasis placed by the Department of Industry on increasing exports.

Senator MCCUTCHEON: That is right; that was what worried me.

Mr. DRURY: We will work very closely indeed with the Department of Trade and Commerce.

If I may, I will now read Mr. Sharp's statement as reported in the House of Commons *Hansard*, on July 4 last, at page 1830:

> Mr. Chairman, during my absence I gather that the hon. member for Winnipeg South Centre has been making some suggestions that I, as Minister of Trade and Commerce, was unsympathetic with the objectives of this legislation, and that I might be concerned about the weakening of my department. I would like to assure the hon. gentleman that during the time I was in private life I was one of the first private citizens to advocate the formation of a department of industry, and I did that with full knowledge of the responsibilities of the Department of Trade and Commerce of which I had been deputy minister at one time.
>
> I believe it is essential for the period ahead that there be centralized, in the department of industry, the administration concerned with industrial development in Canada. I believe that this will add greatly to the efficiency of the government, and that it will leave the Minister of Trade and Commerce more time to devote to his primary functions, which are the promotion of trade.
>
> May I add, Mr. Chairman, that the Department of Trade and Commerce became involved in industrial development because of its offices abroad. These offices were receiving inquiries about the possibility of establishing industrial plants in Canada. So, in order to service those inquiries, it became necessary to establish an office in the Department of Trade and Commerce to which they could be directed.
>
> I believe we have gone far beyond this point in the needs of the country for industrial development, and I consider that now there ought to be a department primarily concerned with industrial development, rather than trying to divide the interests of the Minister of Trade and Commerce among industrial development, trade promotion and trade policy which are his primary functions.

Senator LAMBERT: I think that is a pretty good definition.

The CHAIRMAN: Any other questions?

Senator WOODROW: In what manner do you think the establishment of the Department of Industry might affect secondary industry? In other words, might its provisions hurt secondary industry in any way?

Mr. DRURY: The object of the incentives is to make manufacturing industry more efficient, to make it more able to compete in the world markets. Secondary industry now in existence which is not prepared to become more efficient may be hurt; but the purpose of the incentives, and in so far as the Department of Industry is able to bring it about, is to make manufacturing industry in Canada more efficient, more effective in the world markets.

Senator HORNER: As a whole?

Mr. DRURY: As a whole.

The CHAIRMAN: Any other questions?

Senator LAMBERT: May I ask if the National Research Council is still under the Department of Trade and Commerce?

Mr. DRURY: No. The National Research Council comes under the Chairman of the Privy Council Committee on Industrial Research.

Senator MCCUTCHEON: Scientific and Industrial Research.

Mr. DRURY: The National Research Council comes under a minister, rather than a department; and at the moment, I happen to be the Chairman of the Privy Council Committee on Scientific and Industrial Research.

Senator BROOKS: Mr. Chairman, I was somewhat late coming in, and therefore I do not know what was said earlier; but I would like to ask the minister if there are any ideas regarding the setting up of industry in the fishing areas in the Atlantic provinces. We know that is one of our worst unemployment areas. Of course, fishing is a seasonal industry, and the fishermen are out of employment for a long time between seasons. The record shows that there is a lot of unemployment in those particular areas. What type of industry is it proposed to set up in the fishing areas of the Atlantic provinces that would help them?

Mr. DRURY: Perhaps I might make the same response I did to a similar question that was put earlier, namely, that if I knew the answer, sir, we would not need the department.

Senator BROOKS: Then how will you get the answers?

Mr. DRURY: Well, we are now establishing to deal with this problem, and it is recognized as a serious problem. The Atlantic Development Board, is an initial student of the problem and a propounder of solutions; secondly, the Department of Fisheries, in existence now, has a great familiarity with the skills, aptitudes and potentialities of those engaged in the fishing industry and what other things might be suitable; and thirdly, there will be the new Department of Industry when it is established.

Senator BROOKS: But it would be based on the fishing industry, more or less, would it not,—more processing of fish, and so on, and in other ways related to the fishing industry?

Mr. DRURY: It must be related to the fishing industry, but whether it would be based on it or not, I am not sure.

The CHAIRMAN: Any other questions? Are you ready for the question on the bill?

Hon. SENATORS: Question.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

Senator CROLL: Mr. Chairman, I think we ought to say a word of appreciation to the minister. Even before he has become minister, he has shown extensive knowledge of the problem and I am sure that we are most thankful for his coming here.

The CHAIRMAN: And may I add that we wish him well.

Mr. DRURY: I thank you for your courtesy.

Whereupon the committee adjourned.

First Session—Twenty-sixth Parliament

1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-87, intituled:

"An Act to amend the Customs Tariff".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, JULY 24, 1963

WITNESSES

Messrs. J. Loomer, J. W. Latimer and R. Y. Gray, Department of Finance.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29354-8—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine
Baird
Beaubien (*Bedford*)
Beaubien (*Provencher*)
Bouffard
*Brooks
Burchill
Campbell
Choquette
Connolly (*Ottawa West*)
Crerar
Croll
Davies
Dessureault
Drouin
Emerson
Farris
Gershaw
Gouin
Hayden
Horner
Howard
Hugessen
Irvine
Isnor
Kinley
Lambert
Leonard
*Macdonald (*Brantford*)
McCutcheon
McKeen
McLean
Molson
Monette
O'Leary (*Carleton*)
Paterson
Pearson
Pouliot
Power
Pratt
Reid
Robertson (*Shelburne*)
Roebuck
Smith (*Kamloops*)
Taylor (*Norfolk*)
Thorvaldson
Turgeon
Vaillancourt
Vien
Willis
Woodrow—49

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, July 23rd, 1963.

Pursuant to the Order of the Day, the Honourable Senator Leonard moved, seconded by the Honourable Senator Connolly (*Ottawa West*), that the Bill C-87, intituled: "An Act to amend the Customs Tariff", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Connolly (*Ottawa West*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

J. F. MacNeill,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, July 24, 1963.

The Senate Committee on Banking and Commerce to whom was referred the Bill C-87, intituled: "An Act to amend the Customs Tariff", have in obedience to the order of reference of July 23rd, 1963, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, July 24, 1963.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators:—Hayden, *Chairman*; Beaubien (*Bedford*), Bouffard, Burchill, Choquette, Croll, Dessureault, Hugessen, Irvine, Isnor, Leonard, McCutcheon, Molson, Paterson, Pratt, Smith (*Kamloops*), Taylor (*Norfolk*), Willis and Woodrow.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and the Official Reporters of the Senate.

Bill C-87, An Act to amend the Customs Tariff, was read and considered clause by clause.

It was resolved to report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

Messrs. J. Loomer, J. W. Latimer and R. Y. Gray, Department of Finance, were heard in explanation of the Bill.

It was resolved to report the Bill without any amendment.

At 11.00 a.m. the Committee adjourned until Wednesday July 31st, 1963, at 9.30 a.m.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, July 24, 1963.

The Standing Committee on Banking and Commerce, to which was referred Bill C-87, to amend the Customs Tariff, met this day at 9.30 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 600 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: We have with us this morning Mr. J. Loomer, Mr. J. W. Latimer and Mr. R. Y. Gray, from the Department of Finance.

Senator LEONARD: Mr. Chairman, may I say first that there were some questions asked of me last evening with respect to some of the details of the bill. Senator Isnor inquired as to item 543b and Senator Choquette inquired as to items 312d, 440m, 440n and 179. With these gentlemen present here this morning, this might be a good time to deal with those questions.

Senator ISNOR: That should have been item 543a, Mr. Chairman.

Mr. J. W. Latimer, Tariffs Division, Department of Finance: Item 543a states:

> *... when the textile component is not more than fifty per cent, by weight, of silk, nor fifty per cent or more, by weight, of man-made fibres or filaments or glass fibres or filaments ...*

The purpose of these words in italics is to bring the wording of that item into line with the existing wording in the tariff relating to synthetic fabrics. I am referring to item 562a.

The CHAIRMAN: Item 562a has the qualification of more than fifty per cent.

Mr. LATIMER: Yes.

The CHAIRMAN: Now, where was this less than fifty per cent which appears in item 543a of the bill; where was that before you brought in this item? How do you deal with the items so that they would meet this description?

Senator LEONARD: Is this not the result of the new fabric which links two kinds of materials together, whereas two different kinds were under different classification, and now the fifty per cent rule is used in order that you can mix the two together. More than fifty per cent qualifies the kind of material that is more than fifty per cent, and because of the different kinds of fabrics there are clauses dealing with the one kind, and a reciprocal clause dealing with the other.

Mr. LATIMER: That is correct, Mr. Chairman.

The CHAIRMAN: Before this bill becomes law I am seeking to enter something that meets the description in the italicized part. Under what item would you attempt to levy rates of duty?

Senator LEONARD: It would come under some other class, and that is why you have the various rates applicable up to the present time.

Mr. LATIMER: The new 543a (1) will take in or cover all goods which had been previously classified under tariff number 548c. That item covers table-cloths, centre pieces, doilies of sisal, palm straw or cane straw. The new item also covers most of tariff item 548, which was the old item covering clothing, wearing apparel and articles, made from woven fabrics. Almost all the goods which will fall under 543a (1) have been previously classified under tariff item 548.

The CHAIRMAN: Is it reasonable to say that that makes it much easier for you to deal with, that rather than to have to reach for an item and fit something into it you have an item which covers the thing exactly.

Mr. LATIMER: That is correct.

Senator LEONARD: That brings it in line with the actual situation which exists in the textile industry.

Senator ISNOR: Mr. Chairman, I would like to know if there is an increase in the rate.

Mr. LATIMER: Well, in so far as tariff item 548, the principal item under the old tariff, there would be no change in the rate. The old rates under 548 were 25 per cent and 25 per cent.

With regard to item 548c there will be a slight increase on centre pieces and doilies of sisal, palm straw or cane straw. The previous rates were 20 per cent British Preferential Tariff, 20 per cent Most-Favoured Nation. These will now come in under tariff item 543a (1) at 25 per cent and 25 per cent. The imports of these items are not too significant. The principal item affected is 548, covering clothing, wearing apparel and articles made from woven fabrics.

The CHAIRMAN: That is where you have the volume?

Mr. LATIMER: Yes, and in fact on the main volume of imports there will be no change in the tariff.

The CHAIRMAN: Senator Isnor, had you inquired about another item?

Senator LEONARD: That covers it.

The CHAIRMAN: There was some question on tariff item 179, I believe.

Senator LEONARD: Senator Choquette asked about this; it deals with railway tickets. There is no change there.

Senator CHOQUETTE: Just wanted to know why our railway companies import their tickets.

Mr. LATIMER: Well, Senator Choquette, they do not in fact.

Senator CHOQUETTE: Did they at one time?

Mr. LATIMER: No. This proviso to tariff item 179, if you read it closely, covers tickets issued on railway systems in the British Commonwealth, not including railway systems operating in Canada. The purpose of this proviso is to enable Canadian railways and travel bureaux to issue and sell in Canada to tourists going abroad who buy package tour railway tickets usable in the United Kingdom, and that is something many tourists do want to buy. These tickets may be imported free of duty. We asked the Canadian National and the Canadian Pacific about their own tickets and they advised us that they do not import tickets that they use on their own railways.

The CHAIRMAN: They would not come under this item anyway, would they?

Mr. LATIMER: If they did import them they would be dutiable at 17½ per cent and 22½ per cent.

The CHAIRMAN: What is the other item?

Senator LEONARD: Senator Choquette asked about the imports of asbestos. The only change here has been in the renumbering. I think Senator Choquette was rather interested in knowing the quantity of our asbestos imports.

Senator CHOQUETTE: Yes, what quantity is being imported.

Senator LEONARD: This is item 312d.

Senator CHOQUETTE: Canada is actually the biggest producer of asbestos in the world.

Mr. LATIMER: That is true. I have some statistics here which show that we imported in 1962 $895,000 worth of asbestos products from the U.K., not only brake linings and clutch facings, and from the United States just over $3 million.

I imagine the specific reason we import is that these items are very specialized products. The principal one is asbestos manufactures n.o.p., which would be rather difficult to break down. Asbestos brake linings from the United States, our principal supplier, amounted to $654,000, and clutch facings, $221,000 in 1962. But these imports would not all have been made under the previous tariff item 542, the new 312d. This would have been spread over many items in the tariff.

Probably the most important one would have been 438d, which enables importers to bring in clutches and brakes for use in the manufacture of trucks at reduced rates.

Senator ISNOR: Will you give us the total dollar imports under tariff item 543a?

Senator LEONARD: I have a note of it here given by your department to me, Mr. Latimer. Imports under tariff item 543a, which relates to fully-manufactured products composed wholly or in part of vegetable fibres other than cotton, are about $6 million.

Mr. LATIMER: That is right. I would say the average annual imports are in the neighbourhood of $6.5 million.

Senator ISNOR: I just want to be clear on that. Is that the item covered by item 543a (1)?

Mr. LATIMER: That is correct.

Senator LEONARD: And 543a (2).

Mr. LATIMER: Imports under 543a (1) would be in the neighbourhood of $6.5 million.

The CHAIRMAN: The other item that Senator Choquette inquired about was in relation to tariff items 440m and 440n.

Senator LEONARD: Yes. I think Senator Choquette wanted to know if the aircraft industry had made representations in reference to continuation of the exemption.

Mr. LOOMER: Yes, they have. Both the Air Transport Association of Canada, representing the operators, and the Air Industries Association of Canada, representing the manufacturers, did make representations to continue this exemption.

The CHAIRMAN: Are there any other questions you wish to ask on these tariff items?

Are you ready for the question?

Hon. SENATORS: Question.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Carried.

The committee adjourned.

First session—Twenty-sixth Parliament

1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-26, intituled: "An Act respecting Co-operative Fire and Casualty Company".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, JULY 24, 1963

WITNESSES

Mr. K. R. MacGregor, Superintendent of Insurance and Mr. F. A. Rutherford, of Counsel for the Petitioners.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29356-3—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine
Baird
Beaubien (*Bedford*)
Beaubien (*Provencher*)
Bouffard
*Brooks
Burchill
Campbell
Choquette
Connolly (*Ottawa West*)
Crerar
Croll
Davies
Dessureault
Drouin
Emerson
Farris
Gershaw
Gouin
Hayden
Horner
Howard
Hugessen
Irvine
Isnor
Kinley
Lambert
Leonard
*Macdonald (*Brantford*)
McCutcheon
McKeen
McLean
Molson
Monette
O'Leary (*Carleton*)
Paterson
Pearson
Pouliot
Power
Pratt
Reid
Robertson (*Shelburne*)
Roebuck
Smith (*Kamloops*)
Taylor (*Norfolk*)
Thorvaldson
Turgeon
Vaillancourt
Vien
Willis
Woodrow—49.

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, July 9, 1963.

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Cameron, seconded by the Honourable Senator Woodrow, for second reading of the Bill S-26, intituled: "An Act respecting Co-operative Fire and Casualty Company".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cameron moved, seconded by the Honourable Senator Woodrow, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

29356-3—1½

REPORT OF THE COMMITTEE

WEDNESDAY, July 24, 1963.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-26, intituled: "An Act respecting Co-operative Fire and Casualty Company", have in obedience to the order of reference of July 9th, 1963, examined the said Bill and now report the same without any amendment.

A similar Bill in this matter was passed by the Senate during the last Session of Parliament, but owing to the sudden dissolution of Parliament in February last, the proceedings on the Bill were not completed.

Your Committee recommend that the Parliamentary fees paid upon the Bill of the last Session apply to the Bill of this Session. It is noted that the promoters have again paid the printing costs.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, July 24, 1963.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators:—Hayden, *Chairman;* Beaubien (*Bedford*) Bouffard, Burchill, Choquette, Croll, Dessureault, Hugessen, Irvine, Isnor, Leonard, McCutcheon, Molson, Paterson, Pratt, Smith (*Kamloops*), Taylor (*Norfolk*), Willis and Woodrow.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and the Official Reporters of the Senate.

Bill S-26, An Act respecting Co-operative Fire and Casualty Company, was read and considered clause by clause.

It was resolved to Report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

Mr. K. R. MacGregor, Superintendent of Insurance; and Mr. F. A. Rutherford, of Counsel for the petitioners, were heard in explanation of the Bill.

It was resolved to report the Bill without any amendment.

At 11.00 a.m. the Committee adjourned until Wednesday July 31st, 1963, at 9.30 a.m.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, July 24, 1963.

The Standing Committee on Banking and Commerce, to which was referred Bill S-26, respecting Co-operative Fire and Casualty Company, met this day at 9.30 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made by the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 600 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: Honourable senators, we now have for consideration Bill S-26, an act respecting Co-operative Fire and Casualty Company. Mr. K. R. MacGregor, the Superintendent of Insurance, is here, and I think we should follow our usual practice of hearing from him. Mr. MacGregor.

Mr. K. R. MacGregor, Superintendent of Insurance: Mr. Chairman and honourable senators, the purpose of this bill, S-26, is to change the corporate structure of a Canadian fire and casualty insurance company—namely, the Co-operative Fire and Casualty Company—from a mutual to a joint stock basis. A change of this kind is, of course, rather unusual, but it is by no means unique. Occasionally, some provincial companies organized on a mutual basis have been changed later to a joint stock basis when the company needed strengthening; and the same step has been taken on occasion in some other countries.

In order to understand the purpose of the desired conversion from mutual to joint stock basis in this case, I think I should go back and touch briefly upon the circumstances that existed at the time the company was organized. Approximately twenty years ago, the co-operative movement of Canada desired to have a life insurance company of its own, and sought the incorporation of a provincial life insurance company of Saskatchewan in 1945. That company was called the Co-operative Life Insurance Company and was organized on a mutual basis. At that time the situation was very propitious to the incorporation of a new company, because many units in the co-operative movement already had arranged group insurance with another large Canadian life insurance company, so there was a lot of ready-made life insurance business on the scene at that time.

That provincial life company, started in 1945 in Saskatchewan, was organized on the basis of some money borrowed from some large co-operative organizations, including wheat pools, the intention being that as soon as the company got rolling, so to speak, the borrowed money would be paid back. The fact is it worked out just about that way.

In 1946 they decided they would like a dominion company instead of a provincial one—I am still speaking of the life company—and so they came to Parliament in 1946 and sought and obtained incorporation of the Co-operative Life Insurance Company on a federal basis. That company, by agreement

in 1947, took over the business of the provincial life company, and it was not long thereafter that it was possible to repay the borrowed money that the provincial company had obtained to get started.

Some years later, in 1950 or thereabouts, the co-operative movement expressed strong interest in having not only a life insurance company of its own but also a fire and casualty insurance company. I well recall the discussions that I had in those years with the late Mr. R. H. Milliken, who was the solicitor representing the promoters and also a director of the Bank of Canada, and it was not unnatural that they had in mind starting the fire and casualty company in the same way. I might mention that in our discussions at that time the promoters thought that it would be easy to start a fire and casualty company too, and I recall that in our first discussions on capital only $25,000 was contemplated.

I think it is only fair and appropriate to mention at this time that in those early discussions the department suggested the incorporation of a joint stock company to transact fire and casualty insurance business, because if there is any kind of insurance business that needs capital, ample capital and lots of it, it is the fire and casualty business, under conditions as they have existed in the last twenty years, anyway. However, the final arrangements made were to seek incorporation of a federal company in 1951 on the basis of contributions of $200,000 paid in cash, obtained again from some large co-operatives, including the wheat pools, plus guarantees from those same contributors amounting to at least $125,000.

The intention, of course, at that time—or, the hope, I should say—was that if the company prospered, as they expected, it would be possible before long to repay the $200,000 contributed by the co-operative organizations. The original act therefore included several sections relating to these contributions. They were very similar to capital, but the intention was to repay the contributions later; and there was a provision in the original act for paying interest on these contributions. There was no requirement that interest be paid, and if it were paid it was in fact limited to 3 per cent per annum. Later, in 1959, the company came back to Parliament and had that interest rate raised to 6 per cent. The original act also stated that every policyholder in the company would be a member of the company, and every such member would be entitled to attend annual meetings of the company, any general meeting of the company, in fact; and in accordance with the co-operative philosophy of voting, every policyholder would have one vote regardless of the number of policies he might have. However, the contributors who put up the initial guarantee fund of $200,000 were not made members of the company. They had no right to attend a general meeting and they had no vote.

Senator HUGESSEN: They were like bondholders.

The CHAIRMAN: Without a mortgage.

Mr. MACGREGOR: They were benefactors in the co-operative movement who wished to found and establish this company, but they did so in the expectation they would get their money back within a very few years.

The CHAIRMAN: Were they not being paid interest?

Mr. MACGREGOR: No interest was paid for some years. I have forgotten when they started. But they did pay 3 per cent for a while, and since 1959, when they were authorized to go up to 6 per cent, they have paid 5 per cent. However, I doubt if there has ever been a more difficult period for fire and casualty insurance companies than the period since 1950. The fact is we have a large number of fire and casualty insurance companies in Canada; competition is intense, and on top of that, many factors have led to an increase in the cost of insurance claims. That is certainly so in the automobile insurance field; an increase in the frequency of accidents, more expensive repair bills, and higher awards in

lawsuits and so on have added to this increase. By 1955 the industry was losing money in substantial amounts. It reached the bottom of the trough in 1957 when premiums had to be raised to a certain extent. Since then, until 1962, the fire and casualty companies have been doing a little better; they have been doing a little better than breaking even, and they have recouped some of the losses of the period from 1955 to 1957.

Unfortunately some of the signs we saw in 1954 and 1955 showed their heads again in 1962, and the profit of the industry in 1962 was only about 1 per cent of the total premiums written by all companies in Canada. I mention these things simply to point up that this company started at about the most difficult time that a fire and casualty company could start. However, quite obviously, it has many connections in the co-operative movement and it has been writting business at an increasing rate from the very beginning. That, of course, in itself tends to strain the financial position of the company, and it is, perhaps, not surprising that within a couple of years after it commenced business in 1952, its assets fell a bit below the minimum required by section 103 of the Canadian and British Insurance Companies Act, with the result that we had to report the company to the Treasury Board which fixed a short period of three or four months in which the company had to strengthen its position by getting additional contributions from these original contributors.

Since that time, around 1954 or 1955, the company has been doing quite well in the circumstances. By reason, nevertheless, of its increasing volume of business it has had to call upon these contributors for more and more money in order to ensure that its assets are at least equal to the minimum required under the Insurance Act. The fact is that at the present time the total contributions paid into the company have increased from the original $200,000 to $1,287,565 at the end of 1962. Briefly, the contributors have had to put in $1 million over and above the original $200,000 they paid to start the company.

Under these circumstances alone it is, perhaps, understandable why these contributors may not be prepared to continue to put money into this company, if they are to continue in their present position where they have absolutely no formal say in the operation of the company, have no rights to attend general meetings and have no votes whatever.

Senator CHOQUETTE: Couldn't they have amended their regulations to give those people the right to vote?

Mr. MACGREGOR: They could have, I suppose, Senator Choquette, but I think in addition to that factor there are others that have a bearing on it. I think the promoters and management of this company realize that not only will some additional money be necessary as business continues to increase, but it is going to have to be left in the company permanently. Any hope of repaying these contributions is pretty dim at the present time. Consequently if these contributions are to remain permanently in the company, virtually as capital, they might better be transformed into capital and the company transformed into a joint stock company of the usual kind. In addition to that aspect there is however another one; a few things have happened from time to time that have worried the company and have worried the co-operative movement lest a few individuals might show up at an annual meeting, armed with proxies, and get control of the company. Something of that sort has happened in the U.S.A. within the credit union movement, and something of that kind in fact happened in the sister Life Insurance Company about five years ago.

A difference of opinion seems to have arisen between the then manager and the then president, and the then manager collected proxies from employees, agents and so on, and saw to it that at the annual meeting the president was not re-elected as a director.

Senator McCUTCHEON: That happens otherwise than in the co-operative movement.

Mr. MacGREGOR: Of course, it may. But, in the fire and casualty business the interests of policyholders are relatively short term. It is not even as it is in a life insurance company. One has an automobile policy for a year or, perhaps, a fire insurance policy for three years, and the financial stake that one has is not relatively as great as with a life insurance policy. The fact is that not many policyholders show up at the annual meeting of this kind of company, unless there is something very interesting or important to be discussed.

I should not like to minimize this factor as one of the main reasons for the company's coming to Parliament now seeking a change in its corporate structure. It wants to do something to insure that the control of this company remains in the co-operative movement.

Over the years—in fact, from the outset—this company wanted in its original act—perhaps I should go back earlier than that. The Co-operative Life Insurance Company in 1946 wanted in its original act a provision authorizing what is known as delegate voting within the company. That request was not granted because it did not square with the provisions of the general Insurance Act which permits every member of a company, whether it be a life company or a fire and casualty company, to attend the annual general meetings and to vote at them. Under the delegate system of voting only a selected representative from an area would be permitted to go to a general meeting.

Senator HUGESSEN: I gather the present position is that they want to change that. Any individual could go around to 40 policyholders and obtain proxies from them for one vote each, and then when he went to the annual meeting he could control the whole situation?

Mr. MacGREGOR: That is what happened four or five years ago.

An Hon. SENATOR: Yet the contributors would have no voice.

The CHAIRMAN: Of course, they could have done the same thing if they knew who the policyholders were.

Senator HUGESSEN: It lays the way open for some one individual to do that.

The CHAIRMAN: That position is open to anyone in an incorporated company.

Senator HUGESSEN: But in this case a policyholder, if he holds policy for only $50, has one vote?

The CHAIRMAN: Yes, that is the difference.

Senator PRATT: Have the policyholders in this new company an opportunity of paying for shares and withdrawing their money. This bill will change their status. Are they obliged to take shares?

The CHAIRMAN: Do you mean: If this bill is passed are they obliged to take shares?

Senator PRATT: Yes.

The CHAIRMAN: That raises an interesting question. Would it throw you out of your presentation, Mr. MacGregor, if we were to ask you to deal with this matter? I notice that section 4 refers to contributors who are listed in the schedule, and in those cases the amounts they have guaranteed and paid in cash shall be converted into shares. They have no choice. Then, I notice in subsection (4) the same people who have provided cash under guarantees have an option of being paid or taking shares. The only difference between the two subsections is that in subsection (1) it is the contributors who are listed in the schedule who must take shares, and the words "listed in the schedule" are omitted from subsection (4), so I assume that there are grades or classes of contributors. Is that correct?

Mr. MacGregor: Not exactly, but there is a reason for the difference in wording. This whole question of changing the corporate structure of this company has been under discussion, I should say, for years. They have even had a referendum to the members, and so on, and it is clear to us in the department, at least, that the whole organization of the co-operative movement desires this change.

I mentioned a few moments ago that the total contributions paid into the company at the present time amount to something over $1,200,000. All, or practically all, of the larger contributors have already made application, and we have on file copies of these applications from the various contributors listed in the schedule, seeking to have their contributions changed to shares in the capital stock of this company. They have already signed up, so to speak, and subscribed. So, that is why subsection (1) of the new section 4 says:

> All sums contributed to the Company in cash or paid to the Company under guarantees and listed in the Schedule to this Act are hereby converted—

These contributors have already asked to have them converted.

Senator McCutcheon: Up to the amounts listed in the schedule?

Mr. MacGregor: Yes.

Senator McCutcheon: Some of them who have contributed more come under subsection (4)?

Mr. MacGregor: That is right, and the amounts in the schedule are round amounts. In many cases there are odd amounts as well. I fully expect that all, or practically all, of the other contributors will likewise seek to have their contributions replaced by shares of the capital stock, but there is nothing mandatory about it. That is why subsection (2) of section 4 says that at the request of a contributor—this is for contributors other than those mentioned in the schedule—it may, if it wishes, have its contributions likewise changed to shares of the capital stock. If such contributors do not so request, then the contributions they have made will remain in the company and will have exactly the same status as they have now. But, it is perfectly clear that the great majority will—in fact, they already have—expressed a desire to change their contributions to shares of stock.

Senator Molson: Is there any accumulated surplus in the company?

Mr. MacGregor: Yes, I should like to touch upon that, Senator Molson. But perhaps I might be allowed to say one word further about section 4. I have already touched upon subsection (1) and subsection (2). Subsection (3) simply states that upon conversion into capital stock of any sum contributed, whether under subsection (1) or subsection (2)—then that is the end of it so far as any liability of the company is concerned except as respects the existence of that capital stock. It has no further liability to refund contributions, naturally. Subsections (4), (5) and (6) are simply a replica of sections that are already in the original act of incorporation governing the status of all of the contributions made up to date, and those three subsections at the end are there to govern any residual contributions until they are changed to shares of capital stock or are repaid.

Senator Choquette: While we are on that, Mr. MacGregor, I have one question. If this company becomes a joint stock company should it be allowed to give the impression to people that it is still a co-operative. There is the fact that it will be using the name Co-operative Fire and Casualty Company. Will it be allowed to keep that name?

Mr. MacGregor: That is the intention, Senator Choquette.

Senator Choquette: But is there not some regulation or rule forbidding the use of a deceiving name? This is no longer a co-operative, and yet it is

called the Co-operative Fire and Casualty Company. It does not belong to the co-operative movement.

Mr. MacGregor: It will certainly remain an integral part of the co-operative movement, and, of course, practically all credit unions and other co-operative organizations are organized with capital of a kind; the members subscribe to shares of capital, whether it be a credit union or a commercial co-operative organization.

The Chairman: I should point out to Senator Choquette that there is no rule binding on this with respect to granting or withholding the name. We can do it in our judgment.

Senator Molson: Are the shares transferable?

Mr. MacGregor: Yes. There is another feature which I might go into about control. I should like to answer Senator Molson's question first, but perhaps to finish answering your question, Senator Choquette, I should say that the original company was authorized to issue policies either on the premium note basis or the cash basis. In actual fact it never issued a premium note policy at all, but there was a provision in the original act permitting the company to pay dividends to the holders of any kind of policy—on the so-called cash form as well. That same provision will remain in the act respecting the converted company so to that extent the policyholders will have the same rights to share in any distribution of surplus that they have enjoyed up to the present time. But, the fact is—and Senator Molson may have had this in mind—that there has been precious little surplus in this company, or any other fire and casualty company, in recent years to distribute.

Senator Isnor: Is that because of business conditions, or—

Mr. MacGregor: It is because the companies have not been making money. Most of them have been losing money. To answer Senator Molson, compared with the large groups of fire and casualty companies, as for example the Royal group and others—this company would rank about fiftieth in Canada. It writes about $5 million of premiums a year, whereas these larger groups write something of the order of $30 or $40 million a year.

The assets of this company at the end of 1962 amounted to $7,019,000. It had liabilities of $5,339,000, and, as I mentioned, contributions which in essence are a guarantee fund, of $1,287,000, and a surplus of $393,000, in round figures. Now, a surplus of $393,000 as compared with liabilities of $5,339,000 is nearly 8 per cent. It looks significant, but the fact is, of course, as honourable senators know, that the fire and casualty insurance companies must have a good deal of surplus to protect the policyholders against the wide fluctuations which that kind of business involves. At the present time the assets are only about $60,000 over the minimum required by section 103 of the Canadian and British Insurance Companies Act.

Senator Leonard: If the company winds up now, the surplus will belong to the policyholders?

Mr. MacGregor: Yes, it would.

Senator Leonard: And if it winds up after the passage of this bill, the surplus will belong to the shareholders, not to the policyholders?

Mr. MacGregor: That is correct.

Senator Leonard: That is the change in the legal position?

Mr. MacGregor: Yes. I know it seems unusual that a mutual company should be changed to a joint stock company. On the surface it may seem as if there were some sinister aspect to it, or as if there were, on the part of these large co-operatives, some desire to take over something that belongs now to the policyholders. However, if one looks at the position of the policyholders

at the present time, I think it is clear that somebody will have to put more money into this company. If its experience continues during the rest of 1963 as it has in the first half, this small margin of $60,000 over the minimum required by the Insurance Act is going to disappear and they will have to find more money, as they have had to do on several occasions in the past.

At the present time, I think the only possible source is through these contributors. It may be too much to expect these contributors to put in more money, if they are not to have a very strong say in the management and control of the company.

From the policyholders' point of view, one might say that there is little or no surplus on hand to distribute and it is presently declining. Therefore, on balance, I should say that their position will be strengthened if they can get some permanent protection in the form of capital in this company and a better prospect of more capital, if needed.

Senator McCUTCHEON: As a matter of fact, if they were to attempt to liquidate, to wind up, the surplus probably would disappear in the course of that operation.

Mr. MacGREGOR: Under present conditions, this surplus, in a sense, is nominal, because if they were to wind up, there are only two choices. One is to cancel the insurance and return the unearned premiums, which would involve many adjustments and entail loss of protection. The alternative is to endeavour to sell the portfolio of business to some other registered company. In either case, under existing conditions, expenses and adjustments would likely absorb a very large part of the surplus.

Senator McCUTCHEON: It cannot be said there is any very large transfer of interest from policyholders to shareholders?

The CHAIRMAN: It cannot be said that the substantial purpose is to avoid or evade taxes.

Mr. MacGREGOR: The company, if converted in this manner, will be paying more in income tax than it is paying now. At the present time it is taxed under the Income Tax Act just like any other company. It has no special exemption or the like because of its co-operative nature.

Senator ISNOR: Does it not enjoy exemption for three years?

Mr. MacGREGOR: Yes, it did, but those three years are long past and it was losing money in those early years.

Senator ISNOR: Did it not get exemption for the past three years?

Mr. MacGREGOR: No, sir. But that is almost history.

Senator CROLL: An exemption from paying nothing.

The CHAIRMAN: It was a nominal generosity, or something like that.

Mr. MacGREGOR: The company will be in a slightly less favourable income tax position. At the present time, any interest that this company pays on its guarantee fund, on its contributions, is allowed as a deduction, as an expense, just as interest on bonded debt is allowed in any company as an expense. But this company, if converted in this fashion, and if it pays the same 5 per cent as dividends to shareholders, will not be able to deduct those dividends to shareholders as an expense; so it will pay a little more in income tax.

Honourable Senator Leonard raised the point about the status or position of these contributors if they become shareholders. In fact, the co-operative movement is presently arranging for the incorporation, under Part I of the Companies' Act, of a so-called letters patent company, called Co-operative Insurance Services Limited. The intention in incorporating this additional company is more or less to act as a holding company in relation to the company under consideration now.

This letters patent company, if incorporated, will have a capital of 20,000 preferred shares, having a par value of $100 each, making $2 million in all; and it also will have common shares amounting to $10,000, comprising 1,000 shares having a par value of $10 each. The preferred shares would have no voting rights. They may be paid dividends up to 6 per cent, the same as the contributors may receive now as interest.

As regards these large contributors who have already sought to have their contributions changed to shares of capital stock, their intention is to exchange the shares in this company for the preferred shares of this holding company. It will put them in the same position as they are in now but they would be giving up their voting rights. They would be entitled to the same interest or dividend. The voting rights of the letters patent company would rest with the 1,000 shares of common stock.

Part of the plan of this organization is to distribute, not the whole of the 1,000 common shares in the holding company but to distribute 600 of them equally amongst the six regions in which this company presently operates: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and the Maritimes.

Senator McCUTCHEON: So you will effectively get delegate voting.

Mr. MACGREGOR: I think they will come as close as they can under the existing provisions of the general Insurance Act. One hundred shares will be allotted to each region. They have already had meetings in all these areas. These voting shares will be distributed, oddly enough, perhaps, not only amongst large contributors who happen to be in a particular area but also amongst some other co-operative organizations very active in the co-operative movement.

The whole intent is to spread the control of this company across the length and breadth of the areas where this company, as part of the co-operative movement, operates.

The CHAIRMAN: I think the purpose of the preferred shares is that, if this new company—the converted company—does make money and if it pays into the holding company, they then can redeem the preferred shares and in that way they get their money back without any further tax.

Mr. MACGREGOR: Theoretically that might be done but I am unaware of any such intention at the present time. All that the preferred shareholders could get now, under this set-up of the holding company, is 6 per cent. That would be the maximum. I think the real desire of this co-operative insurance company, like that of co-operative organizations generally, is to provide insurance at the lowest possible net cost. In fact, in most of the co-operative organizations supervised by the Department as, for example, the credit societies under the Co-operative Credit Associations Act being the so-called "centrals" over the local credit unions, the one thing that has worried us over the years is the desire to distribute surplus rather than to build up their reserve positions more strongly; and if I were to guess, I feel that if this insurance company prospers and has surplus to distribute it would distribute it to its policyholders under the dividend provision of this act of incorporation.

The CHAIRMAN: I did not intend to be critical.

Mr. MACGREGOR: No, sir, I did not interpret it in that way. The whole proposal is rather unique, it is complicated; and naturally in the department our main concern is the position of the policyholders. If the contributors want to take shares in this insurance company and after getting those shares they are willing to exchange them for preferred shares in the holding company and see voting power distributed, I think that is their business as far as the department is concerned.

Senator LEONARD: Are such preferred shareholders not entitled to vote under any circumstances?

Mr. MacGregor: Only if interest is not paid for two years, in which case they have a vote.

Senator Leonard: If the dividends on shares are not paid?

Mr. MacGregor: For two years.

Senator Hugessen: That is a matter which is dealt with by the department of the Secretary of State.

Senator Molson: What about preferred shares? Are they redeemable?

Mr. MacGregor: Not to my knowledge, Senator Molson. If they are, it escapes me. I do not recall anything in the letters patent that provides for redemption of them. Mr. Rutherford, the company's solicitor, has been looking after that part of it, and he may be able to answer your question.

Mr. Rutherford: They are recited as being redeemable, but they can only be redeemed, presumably, if the capital of the company was reduced.

Mr. MacGregor: Mr. Chairman, I have only one more word to say, that our conclusion in the department is that if the present guarantee fund is solidified into permanent capital, having regard for the clear need of more money, I think the position of the policyholders will be better under the new set-up than under the existing set-up.

Senator Leonard: Where will the company expect to get additional contributions that may be required, if history repeats itself, when the control is in the holding company?

Mr. MacGregor: The capital would have to be raised in these areas, as it has been in fact raised before. It would not likely come into the insurance company directly, it would likely be provided through the holding company. The insurance company would likely issue additional shares which would be taken up by the holding company and paid for by the money raised in that way.

The Chairman: It has been an altruistic operation up to the moment, and is likely to be.

Senator Croll: I move the adoption of the bill.

The Chairman: Are there any other questions?

Mr. MacGregor: Apart from anything that has been said, whether on the second reading or by me in this committee this morning, there is an additional safeguard from the policyholders' point of view. One may think that perhaps the policyholders have not had a full opportunity to know what is going on. Well, I can say that this whole matter has been debated for years. It was mentioned in the notice calling the annual meeting on March 7, 1962. A resolution was practically unanimously adopted at that annual meeting authorizing the directors and management to come to Parliament to seek a bill of this kind; but quite apart from that, clause 12 of the bill, on page 4, provides that before this act can come into force the Superintendent of Insurance has to put a notice in the *Canada Gazette*, and such notice shall not be given until another special general meeting of all of the members of the company is held, and this act is approved at that special general meeting; so that there has been a good deal of publicity already and there must be more.

Senator Croll: Do you think it is conceivable that a policyholder will see the *Canada Gazette*?

Mr. MacGregor: Well, no. But apart from the *Canada Gazette*, in calling a special general meeting of members—

Senator Croll: But in addition to the special meeting?

Mr. MacGregor: Notice on my part is perhaps more of a formality, but the notice of the special general meeting of the members of the company is much more than that.

The CHAIRMAN: Any other questions? Now, Mr. Rutherford is here, and he is counsel for the company. I was wondering whether he wants to say anything before we pass the bill.

Senator CROLL: No.

Senator MCCUTCHEON: Let us pass the bill.

The CHAIRMAN: Senator Isnor, have you a question to ask?

Senator ISNOR: Just on the question of the name, that is all. I did not know if that was misleading or not. Being co-operative no longer, I was wondering if it should not be on the same basis as other insurance companies.

The CHAIRMAN: Well, the chief membership will still be the co-operatives, most of which are listed on the schedule.

Senator HUGESSEN: I was rather interested to hear Mr. MacGregor say that the Department of the Secretary of State granted letters patent to the holding company with the word "co-operative" in its name.

The CHAIRMAN: Are you ready for the question? Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee thereupon concluded its consideration of the bill.

First Session—Twenty-sixth Parliament
1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-93, intituled: "An Act authorizing the Senate of Canada to Dissolve or Annul Marriages.".

The Honourable T. D'ARCY LEONARD, Acting Chairman

FRIDAY, AUGUST 2, 1963

WITNESS

Mr. E. A. Driedger, Deputy Minister of Justice.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29388-6—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine
Baird
Beaubien (*Bedford*)
Beaubien (*Provencher*)
Bouffard
*Brooks
Burchill
Campbell
Choquette
Connolly (*Ottawa West*)
Crerar
Croll
Davies
Dessureault
Drouin
Emerson
Farris
Gershaw
Gouin
Hayden
Horner
Howard
Hugessen
Irvine
Isnor
Kinley
Lambert
Leonard
*Macdonald (*Brantford*)
McCutcheon
McKeen
McLean
Molson
Monette
O'Leary (*Carleton*)
Paterson
Pearson
Pouliot
Power
Pratt
Reid
Robertson (*Shelburne*)
Roebuck,
Smith (*Kamloops*)
Taylor (*Norfolk*)
Thorvaldson
Turgeon
Vaillancourt
Vien
Willis
Woodrow—49.

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Friday, August 2nd, 1963.

J. F. MacNEILL,
Clerk of the Senate.

29388-6—1½

REPORT OF THE COMMITTEE

FRIDAY, August 2nd, 1963.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-93, intituled: "An Act authorizing the Senate of Canada to Dissolve or Annul Marriages", have in obedience to the order of reference of August 2nd, 1963, examined the said Bill and now report the same with the following amendments:—

1. *Page 1, line 9.* Strike out line 9 and substitute the following:—

"subject to the provisions of subsections (2) and (3),"

2. *Page 1, lines 28 to 32 inclusive.* Strike out subclause (3) and substitute the following:—

"(3) If the bill referred to in subsection (2) is disposed of otherwise than by becoming law or by reason of prorogation or dissolution of Parliament, the resolution dissolving or annulling the marriage shall have full force and effect on the date on which the bill has been so disposed of."

3. *Page 2, lines 1 to 10 inclusive.* Strike out subclause (4).

4. *Page 2, lines 11 to 21 inclusive.* Strike out clause 3 and substitute the following:—

"3. The Senate shall, before adopting a resolution for the dissolution or annulment of a marriage, refer the petition therefor to an officer of the Senate to be designated by the Speaker of the Senate, to hear evidence and make his report thereon to the Senate Standing Committee on Divorce, but such officer shall not recommend that a marriage be dissolved or annulled except on a ground on which a marriage could be dissolved or annulled, as the case may be, under the laws of England as they existed on the 15th day of July, 1870, or under the Marriage and Divorce Act, Chap. 176 of the Revised Statutes of Canada, 1952.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

MINUTES OF PROCEEDINGS

FRIDAY, August 2, 1963.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.30 a.m.

Present: The Honourable Senators:—Beaubien, Burchill, Choquette, Connolly (*Ottawa West*), Farris, Gouin, Irvine, Kinley, Leonard, McCutcheon, McLean, Molson, Monette, Power, Robertson, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*), Vaillancourt, Vien and Woodrow.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

In the absence of the Chairman the Honourable Senator Leonard was appointed Acting Chairman.

Bill C-93, An Act authorizing the Senate of Canada to Dissolve or Annul Marriages, was read and considered.

On Motion of the Honourable Senator McCutcheon it was resolved to Report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of their proceedings on the said Bill.

Mr. E. A. Driedger, Deputy Minister of Justice, was heard in explanation of the Bill.

At 1.30 p.m. the Committee adjourned.

At 2.30 p.m. the Committee resumed.

Present: The Honourable Senators: Beaubien (*Bedford*), Burchill, Choquette, Connolly (*Ottawa West*), Farris, Gouin, Irvine, Kinley, Leonard, Macdonald (*Brantford*), McCutcheon, Molson, Monette, Power, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*), Vaillancourt, Vien and Woodrow.

Mr. E. A. Driedger was heard in further explanation of the Bill.

It was RESOLVED to Report the Bill with the following amendments:—

1. *Page 1, line 9.* Strike out line 9 and substitute the following:—
"subject to the provisions of subsections (2) and (3),"

2. *Page 1, lines 28 to 32 inclusive.* Strike out subclause (3) and substitute the following:—

"(3) If the bill referred to in subsection (2) is disposed of otherwise than by becoming law or by reason of prorogation or dissolution of Parliament, the resolution dissolving or annulling the marriage shall have full force and effect on the date on which the bill has been so disposed of."

3. *Page 2, lines 1 to 10 inclusive.* Strike out subclause (4).

4. *Page 2, lines 11 to 21 inclusive.* Strike out clause 3 and substitute the following:—

"3. The Senate shall, before adopting a resolution for the dissolution or annulment of a marriage, refer the petition therefor to an officer of the Senate to be designated by the Speaker of the Senate, to hear evidence and make his report thereon to the Senate Standing Committee on Divorce, but such officer shall not recommend that a marriage be dissolved or annulled except on a ground on which a marriage could be dissolved or annulled, as the case may be, under the laws of England as they existed on the 15th day of July, 1870, or under the Marriage and Divorce Act, Chap. 176 of the Revised Statutes of Canada, 1952."

At 3.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Friday, August 2, 1963.

The Standing Committee on Banking and Commerce, to which was referred Bill C-93, an Act authorizing the Senate of Canada to Dissolve or Annul Marriages, met this day at 12.30 p.m.

Senator T. D'ARCY LEONARD (*Acting Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was resolved to report recommending authority be granted for the printing of 600 copies in English and 200 copies in French of the committee's proceedings on the bill.

The ACTING CHAIRMAN: Honourable senators, we have before us today Bill C-93, an Act authorizing the Senate of Canada to Dissolve or Annul Marriages. I understand that Mr. Driedger, the Deputy Minister of Justice is present. I am in the committee's hands with respect to procedure. Does Senator Roebuck wish to commence the discussion, or shall we hear from Mr. Driedger?

Senator ROEBUCK: I do not know whether I should commence, but if I am permitted to make a point or two I would like to do so. Usually, before a bill passes second reading the sponsor is given the opportunity of saying a last word. In this instance I was not accorded that privilege. I rose, but His Honour, the Speaker, went right on.

There are one or two points I should like to make—

Senator MACDONALD (*Brantford*): With all due respect to His Honour, the Speaker, I think it should be pointed out that Senator Roebuck had the right to stand up and to start his speech. His Honour, the Speaker, would then have announced that if Senator Roebuck spoke it would have the effect of closing the debate.

Senator GOUIN: That is right. There is no doubt about that.

Senator MACDONALD (*Brantford*): I do not think it should be suggested that His Honour, the Speaker, cut off the debate. I am sure he did not do that knowingly and purposely.

Senator ROEBUCK: I did not intend to imply that. I am merely saying that I would have preferred making these remarks in the house rather than here.

There was some discussion with regard to nullity and the fact that the Civil Code of the province of Quebec was in force prior to Confederation, and it was stated that that gave the courts of the province of Quebec the power to grant nullities. That may be true, although I am not a lawyer of the province of Quebec. I bow to the knowledge of the law of Quebec of my honourable friend, Senator Gouin, but I do know that section 129 of the British North America Act gives to the Parliament of Canada power to change the laws of the various provinces after Confederation in matters within the jurisdiction of the Dominion Parliament, so that any law which we pass in that respect is perfectly constitutional and quite within our powers and rights.

I should like to point this out, too, that we have been dealing with nullities—and they are by no means a nice subject—ever since 1867. There have been from half a dozen to a dozen cases that we have tried each year. Quite a number of those cases have followed an appeal to the church courts. An application is made to the church court first, and then, apparently with the consent of the authorities, the parties have come to us, and we have done what we could to assist. The Standing Committee on Divorce is prepared to continue that.

We are not fond of that jurisdiction, I can assure you, but it has been our jurisdiction. We have a right to it constitutionally, and I see no reason why we should take this particular time to change, if change we desire to make.

There was something said about my definition of non-consummation due to the incapacity of one of the parties. There was some little talk about older people becoming incompetent but, of course, we have never given a nullity on any such grounds as that. Our grounds for granting a nullity has always been incapacity at the time of the marriage, and if the marriage was ever consummated then there was no question about our saying: "No". That is, if the marriage was ever consummated at any time there would be no declaration of nullity. That is all I want to say in that connection. I want to assure honourable senators that our definition does not include incompetence arising after marriage.

The next item I wish to refer to is the veto given to the officer over the powers of the Senate. I want it to be clearly understood by everybody here that I did not draw that clause. I was not consulted about it. I want it understood that I have no private authorship so far as that clause is concerned. I am referring, of course, to clause 3.

I saw that clause at practically the same time as other honourable senators did, and I do not like this idea that we cannot pass a resolution unless it is approved by this officer. I have no objection to an orderly way of amending it, and sending it back. But, on the other hand, let us not be too extreme in this matter. Nothing has been taken away from us by this bill. We have our rights to bring in a bill of divorce and pass it after this bill has been passed, just as we had before. There is no alteration. What we have here are added powers. The Senate never before has been able to dissolve a marriage by resolution. It had to pass a bill, send it to the House of Commons and obtain their consent, and then have it receive royal assent. This is a new power, and by it we are given the power to dissolve marriages by resolution without the consent of the House of Commons provided the officer recommends it.

However, if in our wisdom we wish to change that and not give that extreme power to the officer then it is all right with me.

I have thought about the appointment of an officer in collaboration with others. In particular, the chairman of the Private Bills Committee and our own counsel assisted very greatly in the matter. In addition, we had the counsel from the House of Commons.

I did not want to exclude them—and when I say that I speak as making it very like a capital "I"—we all talked about the taking of evidence through an officer. We held our hand—I held my hand, anyway, because I thought that the less change we made in the procedure the easier it would be to justify, particularly in the province of Quebec.

Therefore, I said: "We will go on hearing these cases, even though they grow very burdensome, as long as it is a public service, and we will not try to change it and extend the powers at all." In the bill I drew, I did not include the appointment of an officer or the referring of the taking of evidence to anybody but ourselves.

In the House of Commons, however, they not only wished to relieve us of some of our burdens, and they have done so, but they have restricted us in doing so, that we can pass the resolution only on the recommendation of the officer.

However, they have not taken away from us the powers which we had in previous times, of passing our own bill and sending it to the House of Commons for its approval. That is all I have to say.

Senator CONNOLLY (*Ottawa West*): On this matter of annulment which was discussed this morning, how does that affect the annulment in the law of Quebec? Does it change anything?

Senator ROEBUCK: No. The Civil Code of the province of Quebec stands as it always has stood.

Senator CONNOLLY (*Ottawa West*): Does the annulment in Quebec come from the courts?

Senator ROEBUCK: Yes, from the courts.

Senator CONNOLLY (*Ottawa West*): It will still have the power?

Senator ROEBUCK: There are also the religious courts but they decide only on religious questions. When they wish to make it a civil right, they come to us.

Senator CONNOLLY (*Ottawa West*): That is on the right to bed and board?

Senator ROEBUCK: They come to the courts, too, in the province of Quebec.

Senator CONNOLLY (*Ottawa West*): They still have that power?

Senator ROEBUCK: They still have that power. We are not taking it away from them.

The ACTING CHAIRMAN: We have here Mr. E. A. Driedger, Q.C., Deputy Minister of Justice. I think we should ask him if he wishes to make any general statement on this bill. I am sure that, whether he makes a statement or not, he is quite prepared to answer questions with respect to the legal aspects of the bill.

Mr. E. A. Driedger, Q.C., Deputy Minister of Justice: Mr. Chairman, perhaps I might make some general comments arising out of the remarks of the honourabe Senator Roebuck. I myself am not a Quebec lawyer but my understanding of the situation has been exactly as he has explained it, as to the Quebec Civil Code, the pre-Confederation law and the effect of this proposed legislation. That is my understanding of it and I quite agree this bill would not affect the situation in Quebec, nor put any limitation on the powers of Parliament to enact a bill as at present.

Senator MCCUTCHEON: Does that mean that there is dual jurisdiction?

Mr. DRIEDGER: This is a legislative act, whereas the other is a judicial act.

Senator CHOQUETTE: They still have the same remedy. If they do not wish to come here, they can follow the rules in the province of Quebec and apply to their own courts for an annulment?

Mr. DRIEDGER: Yes, that would be a judicial procedure. This is the legislative procedure.

As to the second point made, with regard to clause 3, I must confess to authorship of that clause, on the instructions I had received.

Senator ROEBUCK: Yes.

Mr. DRIEDGER: It was indicated to me that it was desirable to have a provision like that in this bill. That is the reason why I prepared it.

If there are any questions about it, I shall do my best to answer them.

Senator VIEN: On that point, which was mentioned by Senator Roebuck, I do agree with him that, there is no general legislation on divorce at present on the statute book. There is some legislation regarding the giving of power to provincial courts to deal with divorce, but there is no general statute directing how divorces are to be proceeded with, except section 91 of the B.N.A. Act. That section brings marriage and divorce under the jurisdiction of Parliament—not under the jurisdiction of the Senate, but of Parliament.

The following is the question which I have in mind. Senator Roebuck stated first that the provisions in sections 3 and 4 do not affect at all the ordinary power that we have exercised in the Senate since 1876 or thereabouts. Does not the old doctrine of *inclusio unius est exclusio alterius* have some bearing here, that is to say, if there is a direction that a certain procedure shall be followed, that is the procedure to be followed and one cannot follow another procedure.

So far, divorce was a matter under the jurisdiction of Parliament. It was dealt with by a private bill which came before both houses of Parliament, it was read three times in each house and passed and then received the royal assent. If we pass legislation now to say that divorce shall be dealt with in the way laid down in this bill, does that not exclude any other way?

Mr. DRIEDGER: A limitation on the legislative power of the Senate would, I should think, be a very serious matter; and I should not have thought that a measure such as this imposes any limitations on the ordinary powers which the Senate has.

Senator VIEN: But we have none. We have the power to initiate legislation on divorce but it has to sanctioned in each case by the House of Commons. Now the House of Commons says: "You deal with the divorce and we shall not have to deal with it, if you follow the following procedure."

Is it not the legislation that is determined now, should we assent to this legislation, which will become the law of the country, and does it not limit us to those provisions?

Mr. DRIEDGER: I should not have thought that it would. This is a permissive alternative procedure.

Senator VIEN: It should state so clearly. Do you not think that it could be capable of such a construction in a court of justice?

The ACTING CHAIRMAN: May I put Senator Vien's question in another way? Is it still possible for a person to go to the House of Commons seeking a private bill to dissolve marriage, to become effective, instead of having to go to the officer?

Mr. DRIEDGER: I do not know any law that would prevent that.

The ACTING CHAIRMAN: Is it your question then, Senator, that one cannot go to the Senate for the same bill and have it dealt with apart from the resolution procedure?

Senator VIEN: If this bill is enacted, nobody will be able to apply to the House of Commons, as far as I can see.

The ACTING CHAIRMAN: That is the question we should like to ask Mr. Driedger.

Senator VIEN: That is the gist of my question. There is no general law on divorce. This is the first law which provides general legislation on divorce. Is it not to be considered as being the legislation and the procedure that must be followed in future?

Mr. DRIEDGER: My view, sir, would be that it is not; that it would still be open to proceed to legislate as before.

Senator VIEN: Could we say so in the bill so that there will be no misconstruction?

Senator CHOQUETTE: We could add another clause to suggest:

> Notwithstanding the wording of section 3, the same remedies that existed before the passing of this act will prevail.

Or something to that effect.

Senator MACDONALD (*Brantford*): May I say now that it appears to me that that is going to be a very important change and I think we would need to be very careful about the wording. I do not think we should ask Mr. Driedger to draw the wording up now. If that is our desire and our feeling, that the wording should be changed, it would be better that we should give him a little time to draw it up and also to deal with other suggestions.

I am getting round to the point now of thinking that this bill must be scrutinized pretty carefully.

I want to make it perfectly clear that, so far as I am concerned, I am not pressing this bill through until we are satisfied that it is in the best form that we should have it.

Senator ROEBUCK: May we hear from our own counsel on this point?

Senator MCCUTCHEON: Before that, I should like to ask one question, to see if Mr. Driedger agrees with me. As I read the bill it provides a new way, an additional way of obtaining divorce. It goes further and indicates or lays down the only grounds on which a divorce can be obtained in this new way. In other words, the officer can only recommend on a ground under the laws of England, and so on, and it still leaves it perfectly free to Parliament to pass a bill of divorce for any reason that it wants; because whatever the practice of the divorce committee has been, as I understand it there has never been any limitation on the powers of Parliament to declare that a marriage is dissolved.

Mr. DRIEDGER: I would agree with that, sir.

The ACTING CHAIRMAN: In other words, Mr. Driedger's opinion, in answer to Senator Vien's question is, that this does not take away the present rights of citizens to apply for divorce by a private bill, either to the Senate or the House of Commons. Is that correct?

Mr. DRIEDGER: Yes.

The ACTING CHAIRMAN: Does our law clerk, Mr. Hopkins, wish to make any comment?

Mr. HOPKINS: I entirely agree.

Senator KINLEY: It does leave the power open to the Commons?

The ACTING CHAIRMAN: That is the effect of the answer. Senator Grosart, did you have a question to ask?

Senator GROSART: Thank you for the opportunity, Mr. Chairman. The question I would like to ask is: In the opinion of Mr. Driedger, is this a delegation of power already existing, and if so what power and to whom is the delegation made? The purpose of the question is this: We have heard it said over and over again that petitioners come here as of right; they have the right of petition to the Crown. This is an ancient right of some sort. Somebody has the power to dissolve marriage—the Parliament of Canada. Is this authority now being delegated to anybody, and if so, to whom is it being delegated?

Mr. DRIEDGER: The effect of this would be to enable the Senate alone to do what is now being done by the two houses, and if that is called a delegation, I suppose you would say there is a delegation to the Senate—it gives it power it otherwise did not have.

Senator McCUTCHEON: But delegates it only in the very narrow circumstances set out in the section, and does not take away the overriding right?

Mr. DRIEDGER: No.

Senator GROSART: Then has Parliament the sovereign right to make that delegation?

The ACTING CHAIRMAN: In other words, is this bill constitutional in Mr. Driedger's opinion?

Senator GROSART: Has the Parliament of Canada, in the opinion of counsel, the right to delegate what in my view is a sovereign authority?

Mr. DRIEDGER: Oh, yes. The general answer to that is yes, of course. Parliament can and does delegate.

The ACTING CHAIRMAN: Senator Connolly.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, coming back to Senator Vien's question, I want to ask a question arising out of a statement I understood to be made of Mr. Driedger, Senator Vien said that there is a new procedure laid down, and he suggested, as I understand it, that the old procedures which imply applying to Parliament for an act still exist. Now, I understood Senator Vien to say should it not be made clear in this bill that those former rights still exist. My question is this: Since those former rights do exist, I think it is bad practice, is it not, to declare them to exist in legislation of this kind which creates a new right or a new power for the Senate. Since they exist they are available to the subject, no matter where the subject is.

Mr. DRIEDGER: I think in general I would agree with that, but perhaps would add this, that the power to grant a divorce or dissolution of marriage, apart from this bill, is a power that resides in Parliament and I do not see how we can either limit the powers of Parliament or say in an act of Parliament that we have not limited the powers of Parliament.

Senator CONNOLLY (*Ottawa West*): That is the point.

Mr. DRIEDGER: And even if it could be considered as an attempted limitation of Parliament's power, if you had a subsequent statute that would be the last word, because Parliament is supreme.

Senator POWER: We often have legislation to consider in which it is provided that what is set forth is subject to the Supreme Court of Canada. Could it not be expressed in this bill that nothing in this act shall alter the right of any subject? Would you go along with that?

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, I do not want to answer on behalf of Mr. Driedger, but the one point in my question is, I don't think we have to do that; I dc not think we add anything by doing so.

Senator POWER: Yes, it would make it clearer.

Senator FOURNIER (*De Lanaudiere*): Mr. Chairman, if we revert to the preface of the bill, it is to make the decision of the Senate binding in order to avoid submitting these bills to the House of Commons. I think I would be satisfied, and I think everybody in the other place would be satisfied too, if there were one simple provision stating that in matters of divorce, taking the laws as they are, or the practices and rules as they are today, the decision of the Senate is final. The procedure would be the same. We would have no delegation at all. We would then discharge the other place of responsibility.

The ACTING CHAIRMAN: May I ask Mr. Driedger a question? This is a private member's bill, but it is a public bill. Is it in order, as not involving any expenditure of Government money, to have a bill passed in this way, introduced by a private member and then passed by both bodies?

Mr. DRIEDGER: I do not see anything here of a financial nature.

The ACTING CHAIRMAN: Then this officer of the Senate to be designated by the Speaker does not mean that he has to be an existing officer of the Senate at the time of the bill coming into force?

Mr. DRIEDGER: Not necessarily at the time the bill comes into force; but he must be an officer of the Senate.

The ACTING CHAIRMAN: If it is not an officer at the time of coming into force, it must be some other officer later to be appointed, is that correct? Does that involve an expenditure of money that has any effect on this bill at all?

Mr. DRIEDGER: I should not have thought so.

Senator MACDONALD (*Brantford*): That is an important answer.

Senator LAMBERT: I think that point was covered yesterday by Senator Roebuck on that very question.

The ACTING CHAIRMAN: It was Mr. Driedger's opinion I wanted.

Senator LAMBERT: The point I wanted to make is that the services of the Senate are supplied by a vote through the budget and through the estimates and approved or rejected by the Treasury Board. Now, from that appropriation the Senate applies whatever is necessary to give it the service that it requires, whether it be an addition to the staff, or anything else. In my opinion, this appointment would be simply adding to the equipment of the Senate and be subject to the expenditures involved through the appropriation.

The ACTING CHAIRMAN: In that case, I put a question either to Senator Lambert or Mr. Driedger: Can we define the qualifications of this officer of the Senate who is to hear this evidence and make the recommendation? Can we define him as a judge or a lawyer?

Senator CONNOLLY (*Ottawa West*): Set out his qualifications, in other words?

Mr. DRIEDGER: Mr. Chairman, I should think that that would be one of the matters with respect to which rules might be made under section 4.

The ACTING CHAIRMAN: But if the Senate itself desires to make sure that only a certain class could be appointed to this post we could do it well within this bill, could we not?

Mr. DRIEDGER: I would think so, yes.

Senator GOUIN: I would like to ask the following question. In so far as the matter of dissolution of marriage is concerned it does not clash with the civil code of the province of Quebec. The dominion Parliament has not the right to amend the civil code of Quebec concerning other matters. My point is this: As we adopt a general law stating that the Senate will have the right to annul marriages, to the best of my knowledge heretofore there was nothing which specified that anywhere, and I believe that implicitly it will amend the code. My point is the following: I want the courts of the provinces to retain their power to declare nullity of marriages in cases of impotency and in other cases. Senator Vaillancourt was pointing out to me and asked, "What about these people who have been married for more than three years and who under Article 177 of the civil code have lost their right to ask for the nullity of the marriage on grounds of impotency?" Personally I say it may be fair, but I have no judgment on that, it may be fair for the Senate to entertain a petition from those people; and I say, is there any serious objection? It comes back to the objection raised by Senator Choquette: Do these provisions not take away from the courts the powers which they have? I would not like the people of the province of Quebec to be in doubt as to the authority either of

a resolution of the Senate or of a judgment declaring the nullity of a marriage, because it has very serious consequences. Is there any serious objection to that?

Mr. DRIEDGER: It is very difficult to answer some of these questions. Perhaps I should begin by saying that this bill provides for a legislative dissolution of marriage rather than a judicial one. It prescribes some conditions under which powers conferred may be exercised but has limitations on the power of the officer to make a recommendation. In other words, it does not legislate into effect any law concerning nullity and I should not have thought therefore that there would be any interference or any change in the law of Quebec or any other province relating to either marriage or divorce.

Senator GOUIN: If, for instance, a court such as our superior court in the province of Quebec has a certain jurisdiction in the matter of nullity of marriages, and if you give jurisdiction to our magistrates court, well, our conclusion in Quebec would be that the former jurisdiction has been transferred from one court to the other. I merely ask if there is any serious difficulty about having a provision which makes it clear that nothing in this bill shall be interpreted as taking away the rights which any court now may have to annul marriages.

While I am on my feet, I would like to raise another point, and it involves section 3. The way I read it it means that the resolution of the Senate shall not be adopted unless the officer has made the recommendation. I understood that to mean it would not be advisable for the divorce committee to grant the petition, I mean to pass a resolution, in view of the unfavourable report of the commissioner. From the explanations given I understand that it would work that way. But as I read the words, "shall be adopted by the Senate only if...", and taking the other conclusion the Senate "shall not" if he does not make the recommendation. Could this provision not be changed so that it would not have that effect?

Senator CHOQUETTE: It might have that effect if we were to drop the word "only" as well.

Senator GOUIN: Yes.

Mr. DRIEDGER: I shall try to answer both of your questions. In the first place I tried to take particular care to frame this bill so that it would provide for a legislative dissolution rather than a judicial dissolution. One of the very important reasons for that was that if the proceedings are judicial, then they might well be subject to the prerogative writs such as mandamus, prohibition, certiorari and so on; but if the bill is framed purely as a legislative process then the internal machinery, the internal procedure, is of a legislative character and therefore will be outside the scope of prerogative writs. If we were to put in a clause to the effect that nothing in this bill shall be construed as altering or changing the jurisdiction of some courts, then we are half confessing that it really is a judicial procedure rather than a legislative procedure. By inserting such a clause the courts might say that this man is a judicial officer rather than a legislative officer, because such clause makes it clear that he is and therefore is subject to the prerogative writs.

Senator POWER: Mr. Chairman, I would like to know what definition Mr. Driedger gives of legislative action as against judicial action. My understanding of legislative action is an old, old one, that it implies the passing of an act by the King and Parliament, and in our case by the Senate and the House of Commons and the Governor General. That is legislative action. Otherwise, how can it be legislative?

Mr. DRIEDGER: My answer, Senator Power, would be this. If it is a judicial act you have preordained laws and the tribunal finds the facts and applies those laws. In the case of a legislative act the tribunal makes the laws, taking into account such facts as it considers desirable. As a legislative act I would include not only acts of Parliament but regulations of the Governor in Council or a minister. Those are what I call legislative acts.

Senator POWER: Acts of the Legislature. But here you confine the powers of your legislative commissioner to following certain laws as they existed on the 15th day of July, 1870.

Mr. DRIEDGER: The power to dissolve marriage is conferred on the Senate by resolution, and section 3 has a limitation, an administrative limitation on the recommendations that the officer can make.

Senator POWER: Well, then, according to your own definition, if he is subject to some law he becomes a judicial character—you just said that. If he acts outside certain laws he does not become a judicial character; but in this section you make him subject to the laws of 1870, and therefore he cannot do certain things—

Mr. DRIEDGER: —he does not actually apply a law.

Senator CONNOLLY (*Ottawa West*): In any event, he does not dissolve the bond; this is done by the legislative body.

Mr. DRIEDGER: Yes.

Senator CONNOLLY (*Ottawa West*): Even though it is not three parts of Parliament, it is at least one part of the legislative body that is doing it.

Senator POWER: Under certain conditions.

Senator CONNOLLY (*Ottawa West*): That is right, under certain conditions, but it is done by an act of that branch of the legislature, and the act in this case is a resolution and not a bill.

Senator MCCUTCHEON: And the resolution is passed pursuant to the authority of the bill we have before us.

Senator MACDONALD (*Brantford*): There is another part to that question.

Senator CHOQUETTE: We have not decided on the wording "shall" and "only".

Senator CONNOLLY (*Ottawa West*): I would like to hear what Mr. Hopkins has to say.

Mr. HOPKINS: I have been in agreement with Mr. Driedger until now.

Mr. DRIEDGER: On the second point, that is entirely a question of policy. My instructions were to make it that way, and that is the way it is.

Senator GROSART: Was not the purpose of your instructions to make this procedure judicial rather than legislative? Is not this what they insisted on in the other place, that it should be, in effect, a judicial office? Is not that the thing they were objecting to, the fact it was a legislative process in the Senate?

Senator VIEN: It seems obvious.

Senator GROSART: Yes, it is obvious. So why have this and say it is a legislative process? My understanding was that it was the intent to make it judicial and take it out of our hands because some people thought the Senate, with its present procedures, was not competent to handle it.

Senator MONETTE: Mr. Chairman, this discussion has benefitted me, and I see some objections disappear. However, some other remains. First of all, the power of Parliament is not affected and cannot be affected. It is not a power granted under our consent or on the consent of the house; it is a

constitutional power. To take away the right to apply to the federal Parliament on divorce and marriage would take a very clear pronouncement in the constitution. So we remain with that power, and whatever is said in the new bill does not take away the power of the citizen, a lady or gentleman, to apply to Parliament for a bill of divorce. So I remain on that.

Senator CONNOLLY (*Ottawa West*): That is right.

Senator MONETTE: So that nothing in this bill could or should be construed as taking away the right of one who cannot succeed by resolution or otherwise, to come before Parliament with a bill, just as anyone who is not satisfied can, as is provided by the general law. He has the right to come before Parliament with a bill, and Parliament has the necessary jurisdiction. Therefore, on that point I accept the view that has been expressed, that the right subsists to apply here by way of a bill for a divorce, concerning the validity of a marriage.

I come to another point. An additional remedy is given by this bill to those who proceed before Parliament by way of a resolution. If that resolution does not satisfy both parties, they can come back with a bill. There remains the additional remedy, which is the resolution. On that I am, with some others, of the opinion that section 3 is not expressing what it should express and perhaps what it was intended to express.

Section 2 says that power is given by Parliament to the Senate to pass a resolution. That is the power given. How could it be proceeded with?

Section 3 says:

> "A resolution of the Senate declaring that a marriage is dissolved or annulled shall be adopted by the Senate only if an officer of the Senate to be designated by the Speaker of the Senate so recommends..."

So we have enough said about that. That means if the officer designated by the Senate—be he a member or employee of the Senate, or another—if he does not recommend the granting of a divorce by resolution, well, it seems to me under section 3 that the Senate has not the power to grant it by resolution.

Senator CHOQUETTE: Senator Monette, that is exactly the point we have reached, and we have asked Mr. Driedger if he could clarify that, and he said, "I do not take the blame for drafting it," and we are about to hear his opinion as to the proposed changes with regard to the words "shall" and "only". So far, all we have had is a repetition of everything that has already been discussed.

Senator MONETTE: That is true, but I wanted to summarize my view. Some remedies have been suggested. I place one before you, Mr. Chairman, in case it may be useful.

Reading the bill at section 3, I would read it now this way:

> "A resolution of the Senate declaring that a marriage is dissolved or annulled could..."

—instead of "shall".

Senator CONNOLLY (*Ottawa West*): "May".

Senator MONETTE: Yes, "may be". I thank you for giving me the proper English word:

> "...may be adopted by the Senate when..."

—and not, "only if"—

> "...when an officer of the Senate to be designated by the Speaker of the Senate..."

—and then I add:

> "...has heard the evidence and reported to the Senate about same."

That is, when this officer reports to the Senate about the evidence, the Senate is not denied from hearing witnesses itself. But we should proceed first by way of the officer of the Senate who would go and hear the witnesses and report to the Senate. After that—and not on the condition that he recommends, but after he has heard the witnesses and reports about the evidence, then the Senate can act. That is all I have to say.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, I do not know whether you intend to adjourn shortly.

The ACTING CHAIRMAN: I am in the hands of the committee as to whether we adjourn for luncheon or carry on.

Senator CONNOLLY (*Ottawa West*): I believe we want to adjourn for luncheon. I am speaking only for myself, but I think everyone feels that.

I wonder if I could have one minute on this point, because I was impressed this morning with what Senator Power said.

Senator POWER: Good man!

Senator CONNOLLY (*Ottawa West*): And with something Senator Roebuck said on this point last night with respect to the powers of the Senate. I would like to say this, and leave the idea with Mr. Driedger. It does look here—and I do not think you can put this construction on it, but it would look as if the officer to be designated could impose his will upon the Senate. I just wonder whether it cannot be done somewhat along these lines, that this officer —as Senator Monette has suggested—hear the evidence and make a report; and, in view of the fact, as Senator Roebuck said last night, this report presumably would be made to the Senate committee, that this man be designated to hear the evidence and make a factual report to the Senate Standing Committee on Divorce. That committee would then receive his report and do as it has historically been done, and make its report to the Senate as to what action should be taken. I believe if that could be spelled out that would meet the objections Senator Power raised this morning. The problem Senator Roebuck discussed last night would probably be out of our way. I simply make these three little points.

The ACTING CHAIRMAN: Might we just leave that over the recess and then ask Mr. Driedger about it? I believe it may be the sense of this committee that an amendment something along the lines of what Senator Connolly (Ottawa West) has suggested might be drafted so that the officer will hear the evidence and make a recommendation to the Divorce Committee, which may approve or disapprove of it.

Senator KINLEY: He would be in an advisory position.

The ACTING CHAIRMAN: He would hear the evidence.

Senator KINLEY: And advise the committee.

Senator MCCUTCHEON: He makes a report, Mr. Chairman, with no limitation concerning the laws of England.

The ACTING CHAIRMAN: I think that may have to come in.

Honourable senators, let us leave this with the instruction to Mr. Driedger, if it is the wish of the committee, that he should see whether something of that sort could be drafted for us to have a look at after the recess.

Would all members please keep their copy of the bill; because these are all the bills we have, and there will be no further copies available.

We shall adjourn until 2.30 p.m.

Luncheon adjournment.

At 2.30 p.m. the hearing resumed.

The ACTING CHAIRMAN: Honourable senators, I think we have a quorum. Our counsel have been very active in the luncheon period. In fact, I do not know if they have had an opportunity to eat. We left on the basis that they would try to draft an amendment to section 3 which would meet the wishes of the committee with respect to the functions of this officer in relation to the Senate itself. I think I shall ask Mr. Driedger, if it is agreeable to you all, to tell us the point at which he has arrived as a result of his work with Mr. Hopkins.

Mr. DRIEDGER: Mr. Chairman, if I understood Senator Connolly (Ottawa West) correctly, then I would suggest that all of the words in clause 3 before the word "but" in line 15 be replaced by these words—

> The Senate shall before adopting a resolution for the dissolution or annulment of a marriage refer the petition therefor to an officer of the Senate to be designated by the Speaker of the Senate, to hear evidence and make his recommendation thereon,

Then it would continue as in the bill—

> but such officer shall not recommend that a marriage be dissolved or annulled except on a ground... et cetera.

Senator POWER: Would you mind reading it again?

The ACTING CHAIRMAN: Senator Power came in just now and he has not heard the proposed amendment.

Mr. DRIEDGER: I shall read it slowly. This amendment would replace everything up to and including the word "petition" in line 15.

Senator ROEBUCK: Prior to the word "but".

Mr. DRIEDGER: It will read:

> The Senate shall, before adopting a resolution for the dissolution or annulment of a marriage, refer the petition therefor to an officer of the Senate to be designated by the Speaker of the Senate to hear evidence and make his recommendation thereon,

And then it would continue as in the present bill.

Senator CONNOLLY (*Ottawa West*): In the last phrase, where it says "to hear evidence and make his recommendation thereon" could we say "to the Committee," or "to the Standing Committee on Divorce"? Would that throw it out, or is that wrong?

Mr. DRIEDGER: That can be done.

Senator ROEBUCK: I would agree to that. Make it perfectly clear.

Mr. DRIEDGER: Yes, that could be done. You would like it to be "and make his recommendation thereon..."

Senator CONNOLLY (*Ottawa West*):—"to the Standing Committee of the Senate on divorce."

Mr. DRIEDGER: Except that the words in clause 6 would not be right, because there we have said "the Senate Standing Committee on Divorce". However, going on from the part you mention it could be "to the Senate Standing Committee on Divorce", and that would be followed by a comma.

Senator POWER: May I ask the draftsman what difference it would make if instead of the word "recommend" he used the word "report"—that the officer should make a report to the committee. I would rather have a report than a recommendation, because a recommendation is, in a sense, giving a judgment.

Mr. DRIEDGER: That would be all right, except that we would then have to consider the concluding words in section 3, which is a limitation of his function—"but such officer shall not recommend that a marriage be dissolved or annulled—"

Senator POWER: We could leave that in.

Mr. DRIEDGER: So that you would use "report" in the earlier part.

Senator FARRIS: May I ask a question?

The ACTING CHAIRMAN: Senator Farris.

Senator FARRIS: This amendment has been made since the luncheon recess?

Mr. DRIEDGER: Yes.

Senator FARRIS: Have you given any more consideration to this amendment than you gave to the original draft?

The ACTING CHAIRMAN: I understand he said he had been instructed to.

Senator FARRIS: You have still left in "an officer of the Senate to be designated by the Speaker". I still think that that means that he is limited in his designation to an officer of the Senate.

Mr. DRIEDGER: Yes.

Senator FARRIS: So that he must be an officer of the Senate before the designation takes place.

Mr. DRIEDGER: Yes.

Senator FARRIS: So he cannot go outside and select the best man for the job. He must look around within the Senate and find a man within the Senate.

Mr. DRIEDGER: Or, through the regular procedure, make him an officer of the Senate.

The ACTING CHAIRMAN: Senator Connolly (Ottawa West) was the one who suggested an amendment along these lines. Senator Choquette was thinking along the same lines, and also Senator Vien. Would you care to comment on the drafting?

Senator VIEN: Could you read the section as amended?

Mr. DRIEDGER: It reads:

> The Senate shall, before adopting a resolution for the dissolution or annulment of a marriage, refer the petition therefor to an officer of the Senate to be designated by the Speaker of the Senate to hear evidence and make his recommendation thereon to the Senate Standing Committee on Divorce, but such officer shall not recommend that a marriage be dissolved or annulled except on a ground on which a marriage could be dissolved or annulled, as the case may be, under the laws of England as they existed on the 15th day of July, 1870, or under the Marriage and Divorce Act, Chapter 176 of the Revised Statutes of Canada, 1952.

The ACTING CHAIRMAN: Does that carry the sense, Senator Roebuck?

Senator ROEBUCK: Yes.

The Acting CHAIRMAN: Senator Connolly?

Senator MCCUTCHEON: Mr. Chairman, I move the amendment.

The ACTING CHAIRMAN: Shall we deal with this section now?

Senator FARRIS: I would like to know why the amendment was made. I am not in favour of either.

The ACTING CHAIRMAN: I think it was made to meet the objections to the existing one before lunchtime, by Senator Power, Senator Choquette, Senator Connolly (Ottawa West), and a number of others who felt that this was taking away or derogating from the rights and powers of the Senate.

Senator FARRIS: Is Senator Power now satisfied?

Senator VIEN: Could we add to that—

Senator FARRIS: I said last night I was going to vote for this bill resentfully.

Senator POWER: We have not dealt with the previous section yet.

The ACTING CHAIRMAN: We are going to deal with the previous section because I think it is important.

Senator VIEN: Would it be possible to add after what you have suggested the words "or as otherwise provided by the laws of the province of Quebec"? It is simply to make clear that nothing in this act will affect the law of the province of Quebec as at present in force. You say "under the laws of England as they existed on the 15th day of July, 1870, or under the Marriage and Divorce Act, chapter 176 of the Revised Statutes of Canada, 1952", which affect Ontario, if I understand correctly. If we said "or as otherwise provided by the laws of the province of Quebec"—

Senator POWER: That would be a complete negation of all the powers of the federal Parliament to grant divorces, because under the laws of the province of Quebec marriage is indissoluble.

Senator VIEN: It is, except that it can be declared annulled.

Senator POWER: You could not grant a divorce on the grounds of adultery if those words are inserted in the bill.

Senator MCCUTCHEON: If those words were inserted in the bill you would take away the powers of the courts of Quebec, and what the senator wants is to leave them there.

Senator VIEN: Yes; it may be dangerous.

Senator CHOQUETTE: Before we leave this, Mr. Chairman, somebody suggested that we replace the word "recommend" by the word "report," because we did not think he should make any recommendation. If we then leave everything else in there we give him power to make a recommendation under certain circumstances.

The ACTING CHAIRMAN: No, I think the other case is a negative of it. His report may contain a recommendation and it may not, but what he may not do is recommend the granting of a divorce upon grounds other than those we now have. It is definite that the word "recommend" should stay in the second time.

To make speed I think we should go to subsection 4 of section 2.

Senator MCCUTCHEON: Is subsection 3 carried?

The ACTING CHAIRMAN: Shall I put the vote on subsection 3 now?

Hon. SENATORS: Yes.

The ACTING CHAIRMAN: Are we agreed to accepting the amendment as suggested by Mr. Driedger?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: With respect to subsection 4 I do not know whether Mr. Driedger is familiar with the point raised originally by Senator Power as to the continuance of proceedings from one session to another. That has not been the case with respect to any other bill or proceedings on a bill, but it is proposed to be done here with respect to these divorce bills. I might put the question to Mr. Driedger: Is subsection 4 necessary?

Mr. DRIEDGER: Mr. Chairman, I must confess at this point that when I prepared this bill I stole subclauses (2), (3) and (4) of clause 2 from a draft bill that had been prepared previously, and I do not feel that I know enough about internal procedure of the Senate or of Parliament to answer your question. I wonder if Mr. Hopkins would care to say something about it.

Senator POWER: Do you not know enough about Parliamentary procedure to realize that the actions of one session of Parliament in proceeding only half way through a piece of legislation must be commenced over again at the next session?

Mr. DRIEDGER: That is the law now.

Senator POWER: That is the law that has always existed.

Mr. DRIEDGER: Yes, and this will change that; but whether that is a desirable change I cannot say. I cannot comment on that.

Senator POWER: I am not questioning the legality of it. I am questioning the desirability of it in these particular cases.

Senator ROEBUCK: There is something to be said in connection with a resolution as adopted by the Senate—

Senator CONNOLLY (*Ottawa West*): —granting a divorce.

Senator ROEBUCK: Yes; and if a petition is then filed along with a private bill which constitutes, in a sense, an appeal from the resolution there will be provisions in the bill setting aside the resolution temporarily until that bill is disposed of either by the signature of the Governor General and its becoming law, or by its being withdrawn or defeated, or something of that kind. The bill rules after it becomes law, otherwise the resolution resumes its effectiveness.

Let us suppose that a petition has been followed by a resolution dissolving the marriage, and a bill has been filed which puts the resolution to sleep for the moment. There then comes dissolution. What happens to the resolution? Does it come into effect? Does it stay asleep until the next session, or what happens to it? You have got to take care of that point if you strike this out.

The ACTING CHAIRMAN: What you want to do is to continue the stay of proceedings until the next session of Parliament.

Senator ROEBUCK: Certainly. I do not care about this particularly, except that there is this about it, that in every session there are divorce bills which we pass and which go to the Commons and die on the Order Paper there. This would preserve those bills and allow them to be passed during the next session. I can see nothing against doing that. They have been considered.

Senator MACDONALD (*Brantford*): May I ask a question? Do I understand this official to be designated will be a full-time official, and that he will hear the evidence when Parliament is not sitting?

Senator POWER: There is nothing about that in the bill.

Senator CONNOLLY (*Ottawa West*): That is another point, I think.

Senator MACDONALD (*Brantford*): No, the point is that he is hearing petitions when we are not sitting. Then the reports of those petitions would have to come forward at the next session.

Senator POWER: That is not in section 4.

The ACTING CHAIRMAN: The point we are dealing with is an application for a bill, and not an application for a resolution. It is an appeal.

Senator CONNOLLY (*Ottawa West*): I wonder if the senator would mind if I asked a couple of questions. I am going to have to say a word or two before I get to the questions. Let us assume, in the first place, that an application is

made to the Senate for a divorce, and the commissioner, or whatever is his designation, hears the evidence. Let us take one example of where he makes a recommendation in favour of the divorce. He reports to the committee, and I suppose the committee in this case makes a recommendation to the Senate that the divorce be granted. One of the parties to the proceeding then says: "I want to appeal against that", so steps are taken pursuant to clause 2 to file a petition to Parliament, and in this case the petition would not be to grant the divorce but against the granting of a divorce.

Senator ROEBUCK: Yes.

Senator CONNOLLY (*Ottawa West*): So that appellant, so to speak, or that petitioner, is therefore seeking to maintain the bond.

Senator ROEBUCK: Yes.

Senator CONNOLLY (*Ottawa West*): And to set aside the recommendation of the commissioner, I suppose?

The ACTING CHAIRMAN: To set aside the resolution of the Senate.

Senator CONNOLLY (*Ottawa West*): All right. I suppose the prayer of the petition is that the resolution of the Senate be set aside, and in that event there is no divorce.

Senator ROEBUCK: That is right.

Senator CONNOLLY (*Ottawa West*): So that in that case the preservation of this section has the effect of preserving the marriage and, perhaps, ultimately preserving it for all time, so in that case this is a subsection that helps Senator Power's interest of preserving the marriage. Is not that right?

Senator POWER: I do not care whether the marriage is preserved or not. First of all, I want the Senate to have the powers which belong to it. Secondly, I do not want these people who cannot get along with each other, and who bring their private squabble up here and make it a public squabble, to have an advantage over other persons who want private bills. By passing this you might have a bill which has reached third reading in the House of Commons, —an appeal bill, if you want to call it that—and then because of the circumstance of prorogation that petitioner is going to get something that nobody has ever been able to get. You can't do that with respect to a bill to raise old age pensions, for instance, and you can't do it with respect to a bill to distribute bounties to the starving poor of Asia; but you can do it for two people who bloody well can't agree and who come to us to settle their differences. That's crazy.

The ACTING CHAIRMAN: May I ask Mr. Hopkins this question: If we strike out subclause 4, what would happen to the stay of proceedings in the interval between two sessions of Parliament? I am thinking of a case where this appeal has been launched during a session and then Parliament dissolves before it has reached third reading. Does the stay of proceedings or the stay of divorce continue until Parliament meets again?

Mr. HOPKINS: No, the bill would be disposed of at dissolution or prorogation otherwise than becoming law. May I just go on to say that I have considerable sympathy with what Senator Power has said. The only reason, as I recall it from our conversations, why this was put in was on the basis that justice delayed is justice denied, and that the matter should be disposed of as reasonably quickly as possible.

As an alternative I would suggest—and this is a matter of policy—to strike out clause 4 and insert in clause 3, as follows. You have to cover the case of dissolution or prorogation. I suggest the insertion, after the words "by becoming

law", in line 29, the words "otherwise than by becoming law or by reason of prorogation or dissolution." The addition of those words will prevent the resolution from becoming effective until the bill had been disposed of.

Senator POWER: Forget about the resolution for a minute and talk about the appeal bill. You get it to third reading in the House of Commons and then dissolution takes place. Are you going to act as if that bill had been passed?

Mr. HOPKINS: No. We have to start all over again.

The ACTING CHAIRMAN: If we strike out subsection (4) it follows the general law of Parliament. By putting in these words, I suggest we would protect the case of dissolution or prorogation. This is my thinking at the moment; I have not had much time to think about it. It would mean putting in some such words as "other than by reason of prorogation or dissolution". Would that affect the resolution?

Senator POWER: But subsection (3) deals with a bill. It starts "if the bill". We are dealing with a bill, not a resolution.

Mr. HOPKINS: The chairman asked me what the effect would be.

The ACTING CHAIRMAN: This is subsection (3). These words are being substituted, to carry on a stay of proceedings, to maintain the marriage. If something is not put in, then when Parliament is dissolved the resolution becomes effective notwithstanding that there has been a bill appealing against it.

Senator MCCUTCHEON: This would hold the stay of proceedings?

Mr. HOPKINS: Yes, until the next session.

The ACTING CHAIRMAN: These words are drafted or intended by Mr. Hopkins to maintain that stay of proceedings and the marriage until Parliament meets again.

Mr. HOPKINS: They would have to start all over again then.

Senator VIEN: The amendment would not have that effect at all. It would have a very different effect. Supposing somebody appeals from the resolution of the Senate with a petition to that effect, coupled with a bill to prevent the resolution of the Senate becoming effective. If you added the words that have been suggested, in subsection (3), it would mean that instead of the matter coming up again before having been disposed of—disposed of by the intervention of dissolution or prorogation—then the resolution would become effective. Whereas, in the suggestion made by Senator Roebuck as to subsection (4) it would mean that we carried out a proceeding as if there had been no intervention by dissolution or prorogation. But in the case that Mr. Hopkins is suggesting, the resolution would become effective.

The ACTING CHAIRMAN: No. The word "otherwise" modifies it, and that word must be considered. It means: "if the bill referred to is disposed of otherwise than by reason of prorogation or dissolution." It is only if it is disposed of otherwise than that, that the resolution comes back into effect.

Senator MACDONALD (*Brantford*): But we do not want the resolution to become law, because this man has filed an appeal by way of a bill.

Mr. HOPKINS: That is right.

Senator MACDONALD (*Brantford*): So what we want is a stay of proceedings. Does this accomplish that?

Mr. HOPKINS: Yes. That is the intention.

Senator MACDONALD (*Brantford*): What does Mr. Driedger say?

Mr. DRIEDGER: Yes, sir, it would accomplish that. The result predicted by the honourable senator here would be the result if that amendment were not made. Without that amendment, the resolution would become effective; but with the amendment the resolution would remain ineffective notwithstanding prorogation or dissolution. They would have to start over again.

The ACTING CHAIRMAN: It is important that the comma be taken out after the word "law". Otherwise it would qualify the two conditions.

Senator CHOQUETTE: Would you read the whole of subsection (3) in the way it is proposed, so that we may copy it down.

The ACTING CHAIRMAN: I shall read it and Mr. Hopkins can correct, if necessary. It reads:

> 2. (3) If the bill referred to in subsection (2) is disposed of otherwise than by becoming law or by reason of prorogation or dissolution,—

Senator CONNOLLY (*Ottawa West*): I suggest we add "of Parliament".

The ACTING CHAIRMAN: Very well.

> 2. (3) If the bill referred to in subsection (2) is disposed of otherwise than by becoming law or by reason of prorogation or dissolution of Parliament, the resolution dissolving or annulling the marriage shall have full force and effect on the date on which the bill has been so disposed of.

Senator MCCUTCHEON: I do not like a preposition at the end of a sentence.

Mr. HOPKINS: It is a bad word to end a sentence with.

Senator MACDONALD (*Brantford*): Yes, "a preposition is a word you should never end a sentence with".

Mr. HOPKINS: May I point out a consequential change which would be necessary. In clause 2, subclause (1), in line 9, it would be necessary to strike out the (4), as there will be no subclause (4). That would make that line read, in part, "(2) and (3)".

The ACTING CHAIRMAN: Is there any future discussion on this propsed amendment?

Senator POWER: I do not like the long title "An Act authorizing the Senate of Canada to Dissolve or Annul Marriages." We are authorized to do so at present. I prefer it to read: "An Act respecting Procedure in the Senate of Canada regarding Annulment and Dissolution of Marriages." At present the wording is "authorizing the Senate of Canada". We have had that authority to pass legislation, although we are not fully authorized; we are authorized, subject to a bill or petition.

Senator CONNOLLY (*Ottawa West*): Once this becomes law and is a statute, it will become known, according to the short title, as the "Dissolution and Annulment of Marriages Act".

Senator VIEN: I would agree to subsection (3) as amended.

The ACTING CHAIRMAN: The amendment, as I read it, is moved by Senator Vien and seconded by Senator McCutcheon. All in favour?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Anyone against? Then that amendment is made to subsection (3), and also the amendment to subsection (2), is included in the same motion. Is that agreed?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: We turn now to section 4.

Senator CONNOLLY (*Ottawa West*): On section 4, I suppose there will be some question as to when this officer can sit. I was trying to find something in The Senate and House of Commons Act about that, but I may not have been looking at the right legislation. The Senate would take power under section 4 to make regulations to permit this officer to sit at given times, whether it was when the Senate was sitting or during recesses of Parliament, and at times like that. Is there anything in the general law which would prevent this?

Mr. DRIEDGER: Section 4 is rather wide in its terms, particularly the last couple of lines, where it says: "and all other matters as it considers necessary or desirable for the carrying out of the provisions of this Act." I should have thought that power would have been wide enough to permit them to do that.

Senator POWER: If a committee of the Senate sits outside during a recess it has to get permission of the Senate. Am I mistaken in that? One of its officers who derived his powers from the committee would be under these regulations, I presume, and would be allowed to sit while the house is not in session?

Mr. DRIEDGER: Yes, sir.

Senator VIEN: During a session or recess of Parliament?

The ACTING CHAIRMAN: Would we not have that power when the rules and regulations themselves come before the Senate?

Senator VIEN: The question put by Senator Connolly was whether or not they could sit without legislation; but this would be legislation and it would clear any possible doubt if you added at the end of section 4, "whether during a session or recess of Parliament".

Senator CONNOLLY (*Ottawa West*): Possibly, Senator Vien, you misunderstood me. My question to Mr. Driedger was whether or not under section 4 the Senate could make regulations which would permit this officer to sit when the Senate is not sitting; and he tells me yes. I am satisfied with that.

Senator VIEN: I would think that section 4 could be so construed, but is it capable of a different construction?

The ACTING CHAIRMAN: Has Mr. Hopkins anything to say?

Mr. HOPKINS: I think the clause is quite broad enough.

The ACTING CHAIRMAN: He could carry on as long as our rules provided.

Mr. HOPKINS: Yes.

Senator VIEN: It can always be altered, if necessary.

The ACTING CHAIRMAN: Shall section 4 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 5 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 6 carry?

Hon. SENATORS: Carried.

Senator VIEN: I would like to offer an amendment by adding to this bill another section, which would become section 7:

> This act shall come into force on a date to be fixed by proclamation of the Governor in Council, provided that such proclamation shall be issued only after the rules and orders mentioned in Section 4 shall have been made and published, and also after Parliament shall have voted out of the Consolidated Revenue Fund such amounts as may be necessary to carry out efficiently the purposes of this act.

The ACTING CHAIRMAN: Any discussion on Senator Vien's proposed amendment?

Senator MCCUTCHEON: Question.

The ACTING CHAIRMAN: Do you want to hear from Mr. Driedger or Mr. Hopkins on it?

Mr. Hopkins: It is a matter of policy.

The ACTING CHAIRMAN: Are you ready for the question?

Senator FARRIS: I should point out that you cannot proclaim the act until the resolutions have been passed.

The ACTING CHAIRMAN: The amendment reads: "Provided that such proclamation shall be issued only after the rules and orders mentioned in section 4 have been made and published."

Senator FARRIS: But what right have you to make those resolutions until the act has been proclaimed?

Senator VIEN: Well, Parliament has the right to make such laws.

Senator ROEBUCK: By the rules and regulations, a change if necessary can be made to add other rules and regulations as in section 4.

Senator CONNOLLY (*Ottawa West*): I wonder if I may say a word, speaking not as a lawyer, but in a practical way. It seems to me that if this bill passes, what we shall be able to do at another session of Parliament is have an official who will hear this divorce evidence. Now he will operate under rules, and these rules must be made originally by the Senate divorce committee, but they must be approved because they are going to be rules of the Senate, and they must be approved by the Senate itself before they become effective.

Senator ROEBUCK: Right.

Senator CONNOLLY (*Ottawa West*): So I think from a practical point of view the control that the chamber has over these rules obtains whether the amendment is written into the bill or not.

Senator VIEN: Is there any objection to the amendment?

Senator ROEBUCK: Oh, yes, I would be very strongly opposed. To begin with, it would nullify the power given us under section 4 to make rules and regulations, because the rules and regulations would then have been expressed and become part of the act so that we would be tied hand and foot in the matter of changing those regulations as time went on. We would gain nothing by holding it back in that way.

Senator VIEN: I will not take up the time of the committee. I agree with Senator Connolly that we shall produce the same results, because the rules and regulations cannot become effective before we pass on them.

The ACTING CHAIRMAN: Is the amendment withdrawn, then?

Senator VIEN: I will withdraw it.

The ACTING CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall I report the bill as amended?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Any other business?

Senator VAILLANCOURT: May I refer to clause 2 which says:

> ...immediately on the expiration of thirty days from the date of the adoption of the resolution of the marriage is dissolved or annulled... thereafter either party thereto may marry any person whom he or she might lawfully marry if the said marriage had not been solemnized.

In Ontario, the law says 90 days. I am afraid there might be a conflict between the two.

Senator CHOQUETTE: Well, it was always like this. The bill went through, and after a stated time a party could marry. We are not changing that.

The ACTING CHAIRMAN: Would you care to speak to that point, Senator Roebuck.

Senator ROEBUCK: If we had made it three months, for instance, and prorogation took place in the meantime, there would be a rather serious complication. Surely thirty days is long enough to put in an appeal.

The ACTING CHAIRMAN: The thirty day is really to give them time to launch the appeal.

Senator ROEBUCK: Originally I specified ten days, and they changed it to thirty days, and I accept that.

The committee thereupon adjourned.

First Session—Twenty-sixth Parliament

1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-46, intituled:

"An Act to amend the Quebec Savings Banks Act"

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, NOVEMBER 27, 1963

WITNESSES

Mr. Gregory J. Gorman, Q.C., Counsel and Parliamentary Agent; Mr. C. F. Elderkin, Inspector General of Banks and Mr. Guy Vanier, President, Montreal City and District Savings Bank.

REPORT OF THE COMMITTEE

APPENDIX

Excerpt from the Minutes of the Meeting Held by the Board of Directors of The Quebec Savings Bank, on July 16, 1963

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29911-5—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine
Baird
Beaubien (*Bedford*)
Beaubien (*Provencher*)
Bouffard
*Brooks
Burchill
Campbell
Choquette
Connolly (*Ottawa West*)
Crerar
Croll
Davies
Dessureault
Farris
Gershaw
Gouin
Hayden
Horner
Howard
Hugessen
Irvine
Isnor
Kinley
Lambert
Leonard
*Macdonald (*Brantford*)
McCutcheon
McKeen
McLean
Molson
Monette
O'Leary (*Carleton*)
Paterson
Pearson
Pouliot
Power
Reid
Robertson (*Shelburne*)
Roebuck
Smith (*Kamloops*)
Taylor (*Norfolk*)
Thorvaldson
Turgeon
Vaillancourt
Vien
Willis
Woodrow—46.

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate, Thursday, November 21, 1963.

"Pursuant to the Order of the Day, the Honourable Senator Vien, P.C., moved, seconded by the Honourable Senator Gershaw, that the Bill S-46, intituled: 'An Act to amend the Quebec Savings Banks Act', be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Vien, P.C., moved, seconded by the Honourable Senator Gershaw, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

29911-5—1½

REPORT OF THE COMMITTEE

WEDNESDAY, November 27, 1963.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-46, intituled: "An Act to amend the Quebec Savings Banks Act", have in obedience to the order of reference of November 21, 1963, examined the said Bill and now report the same with the following amendment:—

Page 1, lines 11 to 21, both inclusive:—Strike out clause 2 and substitute therefor the following:—

"2. Section 24 of chapter 41 of the statutes of 1953-54 is repealed and the following substituted therefor:

'24.(1) Subject to section 25,

(*a*) the authorized capital stock of The Montreal City and District Savings Bank is two million dollars divided into shares of one dollar each, and

(*b*) the authorized capital stock of La Banque d'Economie de Quebec, The Quebec Savings Bank, is one million dollars divided into shares of one dollar each.

(2) The registered owner of each share of ten dollars each of the capital stock of each of the said banks shall be deemed to be the registered owner of ten shares of one dollar each.' "

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 27, 1963.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators:—Hayden, *Chairman;* Beaubien (*Bedford*), Bouffard, Burchill, Campbell, Connolly (*Ottawa West*), Crerar, Croll, Davies, Dessureault, Gouin, Horner, Hugessen, Irvine, Isnor, Kinley, Lambert, Macdonald (*Brantford*), McCutcheon, McLean, Pearson, Pouliot, Power, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vien, Willis and Woodrow.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and The Official Reporters of the Senate.

On Motion duly put it was Resolved to Report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on Bill S-46, intituled: "An Act to amend the Quebec Savings Banks Act".

The following witnesses were heard with respect to the said Bill:—Mr. Gregory J. Gorman of counsel for the petitioners, Mr. Guy Vanier, President, Montreal City and District Savings Bank and Mr. C. F. Elderkin, Inspector General of Banks.

It was Resolved to Report the Bill with the following amendment:—

Page 1, lines 11 to 21, both inclusive:—Strike out clause 2 and substitute therefor the following:—

"2. Section 24 of chapter 41 of the statutes of 1953-54 is repealed and the following substituted therefor:

'24.(1) Subject to section 25,

(*a*) the authorized capital stock of The Montreal City and District Savings Bank is two million dollars divided into shares of one dollar each, and

(*b*) the authorized capital stock of La Banque d'Economie de Quebec, The Quebec Savings Bank, is one million dollars divided into shares of one dollar each.

(2) The registered owner of each share of ten dollars each of the capital stock of each of the said banks shall be deemed to be the registered owner of ten shares of one dollar each.' "

At 10.00 a.m. the Committee adjourned.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 27, 1963.

The Standing Committee on Banking and Commerce, to which was referred Bill S-46, to amend the Quebec Savings Banks Act, met this day at 9.30 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 200 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Senator Vien, you are the sponsor of this bill. Have you anything to say?

Senator VIEN: Mr. Gorman, the parliamentary counsel for the two companies, is present.

The CHAIRMAN: Mr. Gorman?

Mr. Gregory J. Gorman: Mr. Chairman and honourable senators, the bill before you has two purposes. The first purpose is to change the requirements for the qualifications of the directors of the two banks, the Montreal City and District Savings Bank and La Banque d'Economie de Québec.

The second purpose of the bill is to permit an increase in the powers of the banks to lend money on mortgages. The requested increase is from 40 per cent to 60 per cent of the deposit liabilities of both banks.

I am appearing, Mr. Chairman, on behalf of the two banks, which are the only two banks affected by the bill. Present as witnesses in case the committee requires further information is Mr. Guy Vanier, President of The Montreal City and District Savings Bank, and Mr. Antonio Rainville, General Manager of that bank. Both of these gentlemen are familiar not only with the operations and the problems of their own bank but also of the Quebec Savings Bank. They are here at the request of the officials of the Quebec Savings Bank as well.

In respect of La Banque d'Economie de Quebec I would like to file with the committee, Mr. Chairman, a copy of a resolution of the board of directors of that bank passed at a meeting on July 16 last, which approves of and authorizes the changes that are requested.

(*For text of resolution see Appendix*)

The bill that is before the committee seeks to amend the general act, The Quebec Savings Banks Act, which was passed in 1954 and amended in 1957. This is an act of general application, but it applies only to these two banks which I think, are in a sort of unique position among banks.

Senator DAVIES: Would it apply to a new bank if one started up?

Mr. GORMAN: Not without amendment, senator. The reason for the desired change with regard to the eligibility of directors is that since the incorporation of the banks and the passing of the Act the market value of the stock has increased tremendously, so that in order to comply with the original act, in the case of The Montreal City and District Savings Bank, it would require an investment by a person to be appointed as a director of approximately $80,000 and in the case of the Quebec Savings Bank the investment would be about half of that amount. It is found to be very difficult to obtain appointees to the office of director in view of these very stringent requirements. The effect of the amendment would be to reduce the requirements to about one-tenth of what they are now in each case.

The second amendment that is sought with regard to the powers of the banks to lend on mortgages is felt desirable because at the present time both banks are very close to the present limits and it is found that the demand for mortgages on residential real estate in Quebec is very heavy and the banks would like to accommodate this market.

Senator CRERAR: What is the present limit?

Mr. GORMAN: It is 40 per cent, senator, and this increase would be to 60 per cent.

The CHAIRMAN: Any questions?

Senator PEARSON: Mr. Chairman, why does the Quebec Savings Bank have a French name and the Montreal City and District Savings Bank not have a French name?

Mr. GORMAN: I am instructed both have a French name, senator.

Senator PEARSON: Then why does only one appear in this bill?

Mr. GORMAN: Mr. Vanier, can you answer that question?

Mr. Guy Vanier, President, Montreal City and District Savings Bank: It is in the statute, but in that special section there is only reference to the English name of the bank. It is in fact already included in the statute.

The CHAIRMAN: Mr. Elderkin, the Inspector General of Banks, is here, and I think we should hear from him.

Mr. C. F. Elderkin, Inspector General of Banks: Mr. Chairman, honourable senators: I do not think I have any further comment to make outside that which has been made by counsel. I think he has explained the reasons for the first two amendments—namely, the question of qualifying directors which, at the present time, is very difficult to do because of the provisions in the legislation which would require such a very high investment in order to qualify. The reduction in par value of shares from $10 to $1 a share is quite reasonable under the circumstances. The $10 per share was originally set, I think, in 1944, when it was reduced from $100 to $10 at the same time the chartered bank par value was reduced from $100 to $10, but there is no real necessity for having the two on the same level.

As far as the provision for an increase in powers to invest in mortgages is concerned, I can only say that we feel the banks have done an excellent job in the residential mortgage field, and there is certainly no objection from the Government side on giving them increased powers.

Senator CROLL: What is the normal requirement for a director in a chartered bank?

Mr. ELDERKIN: The same approximately, but the price is very much lower. The price of the Montreal City and District shares today is about $175 a share. To qualify, a director would have to make an investment of about $80,000.

Senator CROLL: I mean, in a chartered bank how many shares does he have to hold to qualify?

Mr. ELDERKIN: Five hundred.

Senator DAVIES: In all banks?

Mr. ELDERKIN: It is standard under the Bank Act.

Senator BOUFFARD: Do you mean, though one can buy new shares in the bank, which will probably be 10 to 1, there will be no exchange between the existing shares and the new ones?

Mr. ELDERKIN: Not at all. It will be changed to issuing 10 shares for each share. There is the difference in the terminology in the amendments whereby it is the number of shares instead of the dollar value. In the old Quebec Saving Bank Act it referred to an investment of 5,000 fully paid-up shares.

Senator BOUFFARD: Five hundred.

Mr. ELDERKIN: Five hundred fully paid-up shares. This meant that at the market price the investment would have to be in the nature of $80,000 in the case of the Montreal City and District.

Senator BOUFFARD: Who would buy the new shares at $8 a share? There is no exchange of shares, and the new shareholders will have the same right, so they are going to pay $8 a share.

Mr. ELDERKIN: That is correct, but a director can qualify with about one-tenth of the investment that he can under the present legislation. The 500 shares will cost him about one-tenth of what it will at the present time. It is really a split of 10 for one, and the same number of shares.

Senator BOUFFARD: It is a split of 10 to one?

Mr. ELDERKIN: Yes, and the same number of shares, but not the same number of dollars.

Senator BOUFFARD: There will be an exchange of shares, and the present shareholders will receive 10 for each share they now hold. There is no clause in the bill. Is this going to be a by-law of the bank that is going to permit that?

Mr. ELDERKIN: In changing the par value of the shares from $10 to $1 it automatically must issue 10 shares for one. That was my advice.

Senator BOUFFARD: You are quite correct in that, but I see no clause in the bill that allows the bank to do that. It changes only the par value but does not mean the bank is going to give each shareholder 10 shares for each one that he now holds. Would it not be better to have a clause in the act that would provide for that?

Mr. ELDERKIN: That is a matter of legal opinion, but I think there is merit in your suggestion.

Senator BOUFFARD: We want to be sure the present shareholders will receive 10 for each one they now hold. I think we should put that in the bill as an amendment.

Senator HUGESSEN: I was just wondering, if we pass this bill in its present form, whether section 1 would not be interpreted as meaning 500 shares as of now?

Senator BOUFFARD: There is no provision in the bill under which the shareholder will have an exchange of 10 to 1. It seems to me it should be in the bill so that everyone will be on the same footing.

Senator HUGESSEN: You might not be achieving what you are trying to achieve.

Senator VIEN: Could you draw the amendment?

Senator BOUFFARD: I can, but I am not ready to do it now.

Senator VIEN: We have no objection to that. In my opinion, it is not necessary. Take, for instance, the Montreal City and District Savings Bank. The act states that the capital of the bank will be $2 million, the value in shares of a par value of $10 each, which means there are 200,000 shares. In the original act there is nothing provided that the bank will divide its shares and will have the power to sell its shares. In my opinion, it necessarily follows that the bank must divide its capital into 200,000 shares. If we say it is amended, that the par value of the shares instead of being $10 will be $1, it follows that the bank will issue 2 million shares of $1 each instead of 200,000 shares of $10 each. Now I have no objection to making it abundantly clear that the bank will have the power to call the shares of its present shareholders to be exchanged one for 10. I have no objection to an amendment.

Senator BOUFFARD: If the promoter of the bill is satisfied that is so, I do not want to interfere, but I have grave doubts, and it seems to me we should have the amendment to make it abundantly clear.

Senator VIEN: In matters of law I am always extremely diffident, and I speak with the highest concern of objections raised by other counsel. It will not change anything to say, "And the banks shall have the power to exchange the present shares one for 10".

Senator HUGESSEN: I do not think you even need to do that. I think all you need to do at the end of subparagraph (*a*) and subparagraph (*b*) is to say, "And the holder of each present share of capital stock of the company shall hereinafter be deemed to be the holder of 10 shares."

Senator VIEN: Could you dictate that? It will be quite satisfactory.

Senator HUGESSEN: That is for the Law Clerk.

The CHAIRMAN: I was going to suggest that if Mr. Vanier wishes to add anything further that we hear him, and then we can defer consideration of the bill until the Law Clerk makes the necessary change and we will bring it up here again.

Senator VIEN: I agree the bill in the form you will report it, Mr. Chairman, will have an amendment to that effect.

The CHAIRMAN: And when the amendment is drafted we will submit it to this committee again, later today or tomorrow.

Mr. Vanier, was there anything you wanted to add?

Mr. VANIER: Not particularly, besides thanking you for your very kind attention in considering this bill. However, I want to stress again the urgency of these amendments, because we are stuck with a situation which is most unsatisfactory. When we offer a candidate the possibility of being elected to the board, and he knows that the requirements are that he shall put down $85,000, then we have certain refusals that are altogether too bad for our institution. As to the amendment referring to the investment in mortgages, I should like to say that in my personal opinion I believe there are two main ways of fighting unemployment. One is to keep the building industry going by facilitating the mortgages, and the other is increasing our secondary industry because it provides permanent jobs.

We have to refuse many applications for mortgages unfortunately, and we believe if that privilege was given we could contribute with the federal authorities in the fight against unemployment.

Senator THORVALDSON: I have got a suggestion. Could we not deal with the bill later today? The amendment does not seem to be difficult.

The CHAIRMAN: Will the Law Clerk give us the terms of the proposed amendment?

The LAW CLERK: The proposal would be to break down "24" so that it would read as follows. The first subsection would remain as it is and subsection 2 would read:

> The holder of one share in either of the companies named in subsection 1 shall be deemed to be the holder of ten shares in such company.

The CHAIRMAN: Should we say "banks" instead of companies?

Senator BOUFFARD: Wouldn't it be proper to say that each new certificate would be issued in that form according to the subparagraph?

The CHAIRMAN: That is a matter for procedure. This is the authority. The moment this change becomes effective in law the holder having a certificate for one share shall be deemed to be the holder of ten shares and may ask to have it converted.

Mr. ELDERKIN: There are no share certificates. This is book stock in both cases. I think the Law Clerk is correct in his wording because it is only on the books of the bank that receipts are recorded. It is just a certificate of registration.

The CHAIRMAN: Senator Vien, as sponsor of the bill, have you heard the amendment suggested by the Law Clerk?

Senator VIEN: It is all right.

Senator CROLL: Would you read it again, please, slowly.

Senator CAMPBELL: Mr. Chairman, I think this should be considered in regard to its full effects. It affects not only the issued and outstanding capital stock but also capital stock to be issued. It is really a subdivision of certain shares having a par value of $1 to $10.

The CHAIRMAN: Instead of trying to find the happy words at this stage shall we defer further consideration until later today or tomorrow? We will not need to hear any further evidence.

Hon. Senators: Agreed.

(*Later*):

The CHAIRMAN: Could we revert for a moment to Bill S-46? I think the parties concerned have agreed upon an amendment.

Senator VIEN: The wording on which counsel have agreed would be by adding a subparagraph (2) to section 2 of the bill, in the following words:

> (2) The registered owner of each share of ten dollars each of the capital stock of each of the said banks shall be deemed to be the registered owner of ten shares of one dollar each.

For clarity of numbering, we would repeal section 2 and repeat it with this added subsection (2).

The CHAIRMAN: Does that meet the wishes of the committee?

Hon. SENATORS: Agreed.

Senator VIEN: I might add, in answer to a question raised by the honourable Senator Campbell, that all the shares in these banks have been issued, paid for and are still outstanding.

The CHAIRMAN: There is a motion approving this amendment as proposed?

Hon. SENATORS: Agreed.

The CHAIRMAN: Is there a motion that I shall report this bill as amended?

Hon. SENATORS: Agreed.

The committee thereupon concluded its consideration of the bill.

APPENDIX

Excerpt from the Minutes of the Meeting
Held by the Board of Directors of
The Quebec Savings Bank, on July 16, 1963.

WHEREAS, in order to qualify as member of the Board of Directors of The Quebec Savings Bank, a person must hold shares on which at least $5,000.00 have been paid, which is equivalent to more than $40,000.00 at the current market price, and whereas such an amount is prohibitive and hampers the recruitment of Directors;

AND WHEREAS the market-price for shares of the Bank has, during the last few months, fluctuated between $70.00 and $82.00 a share, and whereas such a high price prevents shares from being more widely distributed among the public;

AND WHEREAS mortgage loans contribute effectively to the development of the building industry, the reduction of unemployment and the growth of the economy, and whereas The Montreal City and District Savings Bank will very shortly be compelled to turn down many applications for mortgage loans, unless some corrective measure is taken to remove certain restrictions concerning this kind of loans;

IT IS THEREFORE MOVED, seconded and unanimously resolved that The Quebec Savings Bank should ask the Government of Canada to amend the Quebec Savings Bank Act, during the present session of Parliament, in accordance with the provisions of the Bill copy of which is hereto attached, which provides:

1. for a reduction of the par value of the shares of the Bank, from $10.00 to $1.00;
2. that, in order to qualify as a member of the Board of Directors, one must hold at least 500 shares having a par value of $1.00 per share; and
3. for an increase of the total amount of the mortgage loans which may be granted by the Bank, from 40% to 60% of its deposit liabilities."

(Signed) H. Voyer,
Secretary.

First Session—Twenty-sixth Parliament
1963

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-49, intituled: "An Act respecting The Canada Northwest Land Company (Limited)."

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, NOVEMBER 27, 1963

WITNESS

Mr. George Perley-Robertson, Q.C., of counsel for the petitioners.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29820-6—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine
Baird
Beaubien (*Bedford*)
Beaubien (*Provencher*)
Bouffard
*Brooks
Burchill
Campbell
Choquette
Connolly (*Ottawa West*)
Crerar
Croll
Davies
Dessureault
Farris
Gershaw
Gouin
Hayden
Horner
Howard
Hugessen
Irvine
Isnor
Kinley
Lambert
Leonard
*Macdonald (*Brantford*)
McCutcheon
McKeen
McLean
Molson
Monette
O'Leary (*Carleton*)
Paterson
Pearson
Pouliot
Power
Reid
Robertson (*Shelburne*)
Roebuck
Smith (*Kamloops*)
Taylor (*Norfolk*)
Thorvaldson
Turgeon
Vaillancourt
Vien
Willis
Woodrow—46.

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 26, 1963.

"Pursuant to the Order of the Day, the Honourable Senator Hugessen moved, for the Honourable Senator Leonard, seconded by the Honourable Senator Taylor (*Norfolk*), that the Bill S-49, intituled: "An Act respecting The Canada North-west Land Company (Limited)", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hugessen moved, seconded by the Honourable Senator Taylor (*Norfolk*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

29820-8—1½

REPORT OF THE COMMITTEE

WEDNESDAY, November 27, 1962.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-49, intituled: "An Act respecting The Canada North-west Land Company (Limited)", have in obedience to the order of reference of November 26, 1963, examined the said Bill and now report the same with the following amendment:—

Page 2, lines 29 and 30: Strike out lines 29 and 30 and substitute therefor the following:—

(2) Holders of the common shares shall have one vote for every share held.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 27, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.15 p.m.

Present: The Honourable Senators:—Hayden (*Chairman*); Beaubien (*Bedford*), Bouffard, Burchill, Campbell, Connolly (*Ottawa West*), Crerar, Croll, Davies, Dessureault, Gouin, Horner, Hugessen, Irvine, Isnor, Kinley, Lambert, Macdonald (*Brantford*), McCutcheon, McLean, Pearson, Pouliot, Power, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vien, Willis, and Woodrow.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and The Official Reporters of the Senate.

On Motion duly put it was Resolved to Report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee proceedings on Bill S-49, intituled: "An Act respecting The Canada North-west Land Company (Limited)".

The following witness was heard with respect to the said Bill—Mr. George Perley-Robertson, Q.C., of counsel for the petitioners.

It was Resolved to Report the Bill with the following amendment:—

Page 2, lines 29 and 30: Strike out lines 29 and 30 and substitute therefor the following:—

(2) Holders of the common shares shall have one vote for every share held.

At 2.30 p.m. the Committee adjourned.

Attest.

JAMES D. MacDONALD,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 27, 1963.

The Standing Committee on Banking and Commerce, to which was referred Bill S-49, respecting The Canada North-west Land Company (Limited), met this day at 2.15 p.m.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The CHAIRMAN: Honourable senators, we have one private bill for consideration that we did not deal with this morning, and in the interests of giving the promoters of that bill the opportunity to bring it forward in the Senate and get it over to the House of Commons as quickly as possible, I would suggest that since there is only one witness and that witness has undertaken to be very short we might go ahead with Bill S-49 now.

The committee agreed that a verbatim report be made of the committee's proceeding on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 200 copies in French of the committee's proceeding on the bill.

The CHAIRMAN: Senator Hugessen, you explained this bill in the Senate, and I was very impressed by the clarity and brevity of your explanation. I wonder if you would like to repeat that for us this afternoon?

Senator HUGESSEN: Thank you, Mr. Chairman. I think practically every member of the committee was here yesterday afternoon. It is quite an old company whose original business was the owning and selling of a large lot of land in the prairie provinces. Over the years it has completed the sale for all practical purposes and instead of being a land company has become, in effect, an investment company, deriving revenues from leases of various oil and gas rights which it had preserved when it sold some of this land. So, as I say, in effect it is now an investment company, and this is the reason the bill is now before us. There are two main parts to the proposed bill. The first is in section 1 of the bill, which changes and to some extent expands its corporate powers to bring them within the normal corporate powers of an investment company, which business it now carries on. There is nothing in any way contentious about that.

The second part of the bill, in essence, provides for certain changes in the capital structure. As honourable senators will remember who listened to my explanation yesterday afternoon, all its original preferred shares have been paid off and the common shares have been paid down to a par value of $1 a share, and there are now slightly under 60,000 common shares outstanding with a par value of $1. The company wishes to increase its authorized capital by the creation, firstly, of additional common shares of a par value of $1. That is to provide for the possible case where it wishes to increase its operations and to add to its investments and to attract additional capital. It also wishes to create $3 million of 2 per cent preferred shares with a par value of $1 each. The only purpose of that is to enable the company from time to time to take advantage of section 105 of the Income Tax Act, which allows a company from time to time to pay an income tax of 15 per cent on its undistributed earnings and capitalize those

earnings and distribute them to its shareholders in the form of preferred shares which are subsequently redeemed. It is a very common practice. Those are the purposes of the bill.

There is one thing I should add. If honourable senators will look at page 2 of the bill they will see that subsection (2) of section 4, after subsection (1) creates an additional one million shares at $1 each, says:

> Holders of the common shares shall have one vote for every four common shares held.

Now, that is very, very old. That comes from the original incorporation of the company in 1893, and I think that now it is entirely unnecessary. In 1893 the company started off with a large number of preferred shares of $100 par value, and a large number of common shares of $25 par value. At that time it was specified that the preferred shares would have one vote per share, and the common shares would have one vote for every four shares, because each had contributed $100 to the capital of the company.

As I said, the old preferred shares have disappeared completely now, and there is nothing but common shares at $1 each, and an additional one million common shares at a dollar each are suggested. I see no reason under the sun why the common shareholders should not have one vote for each share. After all, we as a Parliament are being asked to pass this bill, and I think we ought to stipulate that the ordinary rights of the shareholders should be preserved in a bill the promoters are asking us to pass.

When the time comes I am going to suggest that subsection (2) be amended to provide that holders of the common shares should have one vote for every share held. The promoters of the bill tell me that they are willing to accept that amendment.

Senator DAVIES: Will that 15 per cent tax on reserves still be available?

Senator HUGESSEN: Oh, yes. The present income tax bill does not affect section 105 in any way.

Senator MCCUTCHEON: The senator is thinking, perhaps, of the proposed section 138A, and I do not blame him.

The CHAIRMAN: Are there any questions?

Senator HUGESSEN: Counsel for the company, Mr. George Perley-Robertson and Mr. Kontz are here.

Senator PEARSON: How many of the original directors are there in the company?

Senator HUGESSEN: There are none, Senator, because the company was incorporated in 1893. Even a senator cannot expect to live that long.

The CHAIRMAN: Before we deal with the bill are there any questions that senators wish to ask Mr. Perley-Robertson or any of the officers of the company? The bill seems to be straightforward, so far as my reading of it is concerned.

Senator MACDONALD (*Brantford*): And it was clearly and very well explained.

The CHAIRMAN: Yes, by the master. There is this amendment that Senator Hugessen is suggesting. As I understand it, it is that in the new proposed subsection (2) of section 4 the words "four common shares" be stricken out and the word "share" substituted?

Senator HUGESSEN: Yes.

Senator MACDONALD (*Brantford*): I think we ought to hear from the solicitor on that point.

Mr. PERLEY-ROBERTSON: I just want to say that this matter has been discussed, and I referred it to my principals. We have discussed it since with Senator Hugessen, and we are agreeable to the amendment.

The CHAIRMAN: Then, Senator Hugessen has moved that amendment. All those in favour?

Hon. SENATORS: Carried.

The CHAIRMAN: With that amendment shall I report the bill?

Hon. SENATORS: Agreed.

The committee thereupon concluded its consideration of the bill.

First Session—Twenty-sixth Parliament

1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill S-50, intituled: "An Act to incorporate The Mortgage Insurance Company of Canada".

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, NOVEMBER 27, 1963

WITNESSES:

Mr. K. R. MacGregor, Superintendent of Insurance and The Honourable Mr. Donald Fleming, P.C., Q.C., of counsel for the petitioners.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29822-4—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	O'Leary (*Carleton*)
Baird	Hayden	Paterson
Beaubien (*Bedford*)	Horner	Pearson
Beaubien (*Provencher*)	Howard	Pouliot
Bouffard	Hugessen	Power
*Brooks	Irvine	Reid
Burchill	Isnor	Robertson (*Shelburne*)
Campbell	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Connolly (*Ottawa West*)	Leonard	Taylor (*Norfolk*)
Crerar	*Macdonald (*Brantford*)	Thorvaldson
Croll	McCutcheon	Turgeon
Davies	McKeen	Vaillancourt
Dessureault	McLean	Vien
Farris	Molson	Willis
Gershaw	Monette	Woodrow—46.

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 26th, 1963.

"Pursuant to the Order of the Day, the Honourable Senator Campbell moved, seconded by the Honourable Senator Paterson, that the Bill S-50, intituled: "An Act to incorporate The Mortgage Insurance Company of Canada", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Campbell moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

29822-4—1½

REPORT OF THE COMMITTEE

WEDNESDAY, November 27, 1963.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-50, intituled "An Act to incorporate The Mortgage Insurance Company of Canada", have in obedience to the order of reference of November 26th, 1963, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 27, 1963.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Beaubien (*Bedford*), Bouffard, Burchill, Campbell, Connolly (*Ottawa West*), Crerar, Croll, Davies, Dessureault, Gouin, Horner, Hugessen, Irvine, Isnor, Kinley, Lambert, Macdonald (*Brantford*), McCutcheon, McLean, Pearson, Pouliot, Power, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vien, Willis and Woodrow.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and The Official Reporters of the Senate.

On Motion duly put it was Resolved to Report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committees proceedings on Bill S-50, intituled: "An Act to incorporate The Mortgage Insurance Company of Canada".

The following witnesses were heard with respect to the said Bill: Mr. K. R. MacGregor, Superintendent of Insurance and The Honourable Mr. Donald Fleming, P.C., Q.C., of counsel for the petitioners.

It was Resolved to report the Bill without any amendment.

At 11.30 a.m. the Committee adjourned.

Attest.

JAMES D. MacDONALD,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 27, 1963.

The Standing Committee on Banking and Commerce, to which was referred Bill S-50, to incorporate The Mortgage Insurance Company of Canada, met this day at 10 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 200 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Honourable senators, the next bill we have is an act to incorporate The Mortgage Insurance Company of Canada.

Senator CAMPBELL: Honourable senators, I explained this bill at some length in the Senate yesterday. I don't think there is any need to explain the bill further because most of the members who were here yesterday heard the explanation. The Honourable Donald Fleming is here representing the incorporators, and Mr. MacGregor is here representing the Department of Insurance. I think it is best to have Mr. Fleming make a statement and then hear from Mr. MacGregor.

The CHAIRMAN: I think we should follow our usual procedure and hear from Mr. MacGregor first. Incidentally there may not be a number marked on the copies of the bill but it should be S-50.

Mr. K. R. MacGregor, Superintendent of Insurance: Mr. Chairman and honourable senators, there have, of course, been many bills before this committee over the years to incorporate insurance companies, or otherwise dealing with them. However, I think it would be misleading if I were to say or imply in any routine fashion that this is just another bill in that long series. The purpose of this bill is to incorporate a Canadian insurance company to transact the business of mortgage insurance, that is to say, insurance against loss caused by default on the part of the borrower under a loan secured by a mortgage on real estate or on an interest in real estate. Briefly the company, if incorporated, would be of a very special kind. It would be a specialty insurance company in the full and true sense of the word.

I might mention in this connection that there is not now any insurance company in Canada presently carrying on this kind of insurance. And there are very few companies carrying on this kind of insurance in the United States. There is perhaps a handful of companies in the United States doing so, but they are practically all of recent origin. Now I am sure the question must arise in the minds of members as to who are behind this bill, and what are their objectives. Unfortunately I did not hear the debate on second reading, so

I regret if I should cover any of the same ground that was covered at that time. Nevertheless I might make a few comments indicating or outlining my understanding of the background of the bill as revealed by my discussions dating back to about last April with the promoters of this proposed company.

Looking at clause 1 of the bill where the incorporators are named, I think I am correct in saying that Messrs. McDonald and Jameson are connected with the Bank of Nova Scotia; that Messrs. Guest, Rockwood and Brown are connected with the legal firm of Blake, Cassels, etc., in Toronto; that Messrs. Brock and Beaulieu are connected with the Aluminum Company of Canada; and that Messrs. Boyd and Stott are connected with the investment firm of Greenshields Incorporated.

The story as it has developed seems to be substantially as follows: The Aluminum Company of Canada produces aluminum for a variety of commercial purposes amongst which are building components of houses. Aluminum is now being used in the form of aluminum siding for houses, sash, ducts for heating purposes and so on. Apparently these products have been used to an increasing extent in recent years in house building. The Aluminum Company of Canada, I understand, found a particular need to assist in the financing of houses in the range of prices above the range covered by the National Housing Act, that is to say in the range from about $20,000 to $30,000. Loans in the N.H.A. range, up to $15,600 or thereabouts, can readily be financed under that act. When it comes to financing new houses in residential areas above the N.H.A. range, the usual course is to get a first mortgage from one of the recognized lenders, perhaps up to two-thirds, which is the usual limit, of the value of the property; and then, as is so often the case, if the borrower has not sufficient equity to put up the rest himself he looks for a second mortgage. I think the practices in the second mortgage field are well known to this committee, namely, the relatively high rates of interest that second mortgages have been carrying, and usually the term of a second mortgage is relatively short compared to the term of the first mortgage, which of course means high monthly payments under the second mortgage. This, together with the relatively high rate of interest, results in a substantial if not serious burden on the owner of the property.

To meet this need the Aluminum Company of Canada in the first instance apparently put up some second mortgage money itself. It did so on relatively favourable terms. If, for example, the going rate on the first mortgage was $6\frac{3}{4}$ per cent the Aluminum Company of Canada would arrange combined financing covering both the first and second mortgages so that the over-all rate to the borrower was 7 per cent. The first mortgagee got $6\frac{3}{4}$ per cent on five-sixths of the aggregate indebtedness, if the first mortgage were for $66\frac{2}{3}$ per cent of the value of the property, and the second mortgage were for $13\frac{1}{3}$ per cent, making the aggregate 80 per cent. The borrower paid over all 7 per cent, so that the Aluminum Company of Canada would get about $8\frac{1}{4}$ per cent on its one-sixth share, its second mortgage money.

Nevertheless, it meant that the borrower just paid about one-quarter of one per cent over the going rate on the whole indebtedness. This was a very favourable arrangement. However, it is understandable that the Aluminum Company of Canada is not primarily in the mortgage lending business and it did not want to continue to provide second mortgage money even though it was interested in furthering the sale of its products for building purposes.

The next step in the story seems to be that a trust company a couple of years ago was contacted and arrangements were made through that trust company whereby it would put up the first mortgage money, say two-thirds of the value of the property, and some other lender, as second mortgagee, would put up the extra money up to a total of 80%.

The nature of the arrangements finally settled upon were the same as I described earlier when the Aluminum Company of Canada put up the second mortgage element itself, but the differential in the rate between the first mortgage money and the second mortgage money was larger. Other trust companies picked up the same practice and I am sure many honourable members will have noticed references in the newspapers to the so-called 80 per cent mortgages, frequently made at 8 per cent. Such arrangements in the main mean that the first mortgage money is perhaps put up at 7 per cent, and both the first and second mortgage are administered by the first mortgagee. The borrower pays 8 per cent over all, which means that the second mortgagee gets about 13 per cent on his second mortgage money.

Now those arrangements, although they have been relatively common in the past couple of years, still mean that the borrower is paying a pretty high rate on his second mortgage money. The rates in such arrangements have varied but I think it is correct to say that the effective rate on second mortgages arranged that way have run between 10 per cent and 14 per cent per annum.

I might mention in this connection that the firm of Greenshields Incorporated have seemingly been associated with the Aluminum Company of Canada in its endeavour to find suitable mortgage arrangements along these lines. My understanding is that they have a feeling that this recent practice that I have just described, which although satisfactory in many respects, is not the best solution to the problem of providing second mortgage money at a reasonable rate of interest.

After a good deal of study in association with the Bank of Nova Scotia, they seem to have reached the conclusion that in their opinion the most satisfactory solution would be to have some facilities in Canada whereby mortgage insurance would be available more particularly covering the top layer of any loan which is now being advanced through second mortgage money.

Perhaps I might at this point mention that the three organizations already mentioned namely, the Aluminum Company of Canada, the Bank of Nova Scotia and Greenshields Incorporated are, as I understand it, really the organizations behind this bill, and that explains the names of the incorporators mentioned in it, two of which come from each one, plus three others from their firm of legal advisers. Perhaps I might go on to say at this point that if the company is incorporated I understand these three organizations—the Aluminum Company of Canada, the Bank of Nova Scotia and Greenshields Incorporated—will be the principal shareholders of this company. I do not know and I think it is not yet known who else may join them but I think it is their intention to retain at least 51 per cent of the stock.

Senator ISNOR: You mean by that that these three organizations will retain 51 per cent of the stock?

Mr. MACGREGOR: That is my understanding, Senator Isnor.

So, one sees a very praiseworthy objective on the part of these promoters, namely, to find some means of providing second mortgage money at more reasonable rates of interest. I think their desire has been stimulated by their own experience that I have just described, and by recent developments in the U.S.A.

A few new mortgage insurance companies have been incorporated there in recent years, the most notable of which is a company called The Mortgage Guaranty Insurance Corporation, with head office in Milwaukee, Wisconsin.

That company was incorporated in 1956 and began business in 1957. Since then it has done a rapidly increasing volume of mortgage insurance, more particularly in recent years in connection with the loan and savings associations in that country.

Senator CROLL: Mr. MacGregor, just to set me right, is not that a company which is having a considerable amount of trouble at the present time with Congress, under investigation and what not?

Mr. MACGREGOR: Its name has been in the press in recent times, senator.

Senator CROLL: In connection with an investigation that Congress is dealing with at the moment?

Mr. MACGREGOR: Yes.

Senator CROLL: And charges are being hurled about pretty recklessly.

Mr. MACGREGOR: If you like—

Senator CROLL: It occurred to me.

Mr. MACGREGOR: If you like, I shall deal briefly with that situation, although it is hearsay so far as I am concerned and I would prefer that it not be on the record.

Senator CROLL: I only got it from the press of the United States.

Mr. MACGREGOR: My understanding of the situation briefly is this. The company in question was apparently incorporated by certain individuals, I think in Milwaukee, real estate brokers and others associated with them.

It started with a relatively small capital—I think it was $250,000. My understanding is that it did not, at the outset, have any connection with the loan and savings associations. However, its business seemingly developed and it needed more capital. I think that initially it had some difficulty in raising additional capital; but the officers seemingly interested certain officers of the loan and saving associations and additional capital was raised.

This is a peculiar type of insurance and additional special reserves are certainly appropriate. This company started building up such additional reserves. A question then arose as to their status for income tax purposes. Apparently the company spoke to its local congressman.

Senator CROLL: Mr. Byrnes.

Mr. MACGREGOR: A congressman representing Wisconsin, seeking his assistance in Washington to get this tax difficulty straightened out.

I think the first ruling was adverse to the company. In other words, the company could not appropriate moneys to this reserve without paying tax on them, whereas it desired to appropriate moneys to this reserve and pay tax later, when the reserve was drawn down if not required.

In any event, the outcome seems to have been a reversal of the original opinion, namely a favourable tax ruling ultimately from Washington. That, I understand, is the way the congressman in Washington became involved—he subsequently became a shareholder of this company, but, from the press reports, not until six months afer the tax matter was settled.

I think another gentleman, by the name of Baker, whose name has likewise appeared in the press, also became associated with the company, as a shareholder. The company contends, according to the press, that no influence was ever sought from that gentleman nor was any favour ever obtained or granted through him. Unfortunately, his name has been in the press in other connections, and he turns up as a shareholder of this company; and that, in conjunction with this tax matter, seems to have brought the name of the company—

Senator MCCUTCHEON: As I understand what you started to say, Mr. MacGregor, the company has been conducting a successful mortgage insurance business.

Mr. MACGREGOR: There is no question of that, up to date.

Senator MCCUTCHEON: There is no reflection on the company's financial standing or its ability to carry out its obligations.

Mr. MacGregor: I am aware of nothing, from press reports we have recently in connection with it.

Senator Bouffard: I should like to ask does it mean that the second a man gets a second mortgage on his property he has to insure it with the company and pay the premium on that mortgage? The mortgagee?

Mr. MacGregor: The mortgagor. May I deal with the details of the arrangements later? I thought I might just paint a picture of the evolution of the scheme first.

Referring again to this mortgage insurance corporation in Milwaukee, which is popularly referred to as "magic"—or M.G.I.C., meaning Mortgage Guaranty Insurance Corporation—it has certainly in its six years of existence done a very flourishing business. In the last two years at least it has done a large part of its business in connection with the loan and savings associations in that country, which have the power in many if not most cases to make very large loans in reference to the appraised value of the property, loans going up not just to two thirds or 75 per cent but in most cases to 90 per cent. So there was a ready field for insuring relatively high ratio loans.

Just this year I understand that the company has gone to the public for additional capital.

Other companies have been incorporated in North Carolina for these purposes, quite recently; also one in New Orleans, another in Madison, Wisconsin, and I understand that the American Bankers' Association is currently seeking the incorporation of a very large company of this kind. According to the press, one of the thoughts behind the company last mentioned is to get at least another good substantial company in the field perhaps to discourage a mushrooming of a lot of small companies in this field.

Now, to get back to my main line of thought. Here is a situation where as I see it the objective is a very laudable or praiseworthy one. At the same time I must say that there have been mortgage insurance companies in the past, more particularly in the twenties and the thirties, and practically all of them had an awful fate. They practically all failed. I refer in this connection more particularly to the United States. There were, back in the twenties, many mortgage insurance companies specializing in this field. There were also some regular and some very well known United States fire and casualty insurance companies operating in the mortgage insurance field and, without naming them, two of them at least are exceedingly well known now, they virtually went "broke" in the thirties because of mortgage insurance. The fact is that they were bailed out by the R.F.C. at that time—the Reconstruction Finance Corporation.

The other specialty mortgage insurance companies at that time pretty well all went by the boards.

Senator Macdonald (*Brantford*): Did insurance companies doing business of other types also go down during that difficult period of the thirties?

Mr. MacGregor: Yes, some failed in the U.S. but I cannot name any readily that did. There were three pretty well known fire and casualty insurance companies particularly in trouble and two of those three were bailed out in the manner I have stated.

Senator Macdonald (*Brantford*): At that time there were many banks that failed also.

Mr. MacGregor: That is quite right. In order to complete the picture, I think one should also recall that most mortgage loans made in those days were not amortized. The mortgagor paid the interest, and the principal ran on with little or no reduction. Secondly, most of the troubles in those years were attributable to large commercial loans, not to residential loans. With that history,

you can understand that when the promoters of this company approached us, laudable as the objective might be, we did not have too much enthusiasm to see a mortgage insurance company incorporated. However, as far as the department is concerned, we felt that in view of the objective and in view of the improved conditions in mortgage lending practices, we had to do all we could to work out with these people a company on safe and satisfactory lines. We have been busily engaged to that end throughout the summer and quite intensively throughout the fall. So far as the department is concerned, we felt that if there is to be a mortgage insurance company in Canada, then it ought to be formed and remain in strong hands; secondly, that it ought to be strongly capitalized; thirdly, that everything reasonably possible should be done to confine its business, at least for some years until a lot of experience is gained, to areas of the mortgage lending field that are considered to be reasonably safe; in other words, residential areas.

Senator CRERAR: Mr. MacGregor, there might be the fear of possibility of failure with the company, and it might be felt that the borrower would be soaked too much in interest. Is there not that possibility?

Mr. MACGREGOR: Well, the latter point arises first. Under present conditions, the borrower does in many cases pay too much on second mortgages, or at least pays a very high rate of interest. That is the objective behind the incorporation of the company, namely, to reduce the rate.

Senator CRERAR: If I may ask a question. Under the proposed arrangements of this bill what equity would the borrower be expected to supply?

Mr. MACGREGOR: As the company proposes to start out, they intended to limit the aggregate indebtedness under a first and second mortgage to 83⅓ per cent of the value of the property. It is conceivable that in some exceptional case they might go a little above that, but this is not their intention as a regular means of operation.

Senator CRERAR: Are these on amortized loans?

Mr. MACGREGOR: Yes, always amortized, and never for more than 30 years.

Senator CRERAR: And never under?

Mr. MACGREGOR: Well, there is no minimum.

Senator MACDONALD (*Brantford*): Is that a requirement in the act?

Mr. MACGREGOR: It is not in the act, Senator Macdonald. It is an expressed intention on their part to the department as to their proposed method of operation; they intend to operate mainly in the first instance at least in that area of houses between $20,000 and $30,000—I am speaking of the value of the properties rather than the loan—which is of course above the N.H.A. range. They intend to confine themselves mainly to single family dwellings, or, at the most, duplexes, or four unit apartments, but nothing larger than that, at least for the time being. They intend to require amortization in every case, and as I have said, to stipulate a maximum term of 30 years.

Senator Crerar, you asked me what our fears were. Our fears were primarily that the company might suffer the same fate as other companies of this kind did 30 or 40 years ago. Our main desire is to see the company, if it is incorporated, started on the firmest foundation reasonably possible, and to ensure that not only are its practices reasonably conservative but that the volume of business it transacts is kept in harmony with its available capital and reserves. In any form of fire and casualty insurance there is of course the catastrophe element. Those companies never know when there may be a conflagration or a hurricane which may hit them very badly, but in that kind of case the jolt is a one-shot affair at the time. Usually in mortgage insurance, the company may run through good times, or it may run through some soft economic times, or it may hit, although we hope not, a depression period such

as in the thirties. It is not good enough, as I see it, to see a company of this set up so that it can weather good times and soft times but cannot weather a prolonged jolt that it may get in a really bad period economically when defaults and foreclosures may be very high.

Senator CRERAR: Well the jolt would come in the case of a depression by having to take over a lot of properties.

Mr. MACGREGOR: That is right, but that is when their losses would be substantial and might be very serious, and they would probably extend not for a month or two months but for over a year or two years, or whatever the period of the depression might be.

Senator CRERAR: Would it be an additional safeguard if the person putting up the security for the loan were obliged to put up a larger amount?

Mr. MACGREGOR: Well, unfortunately, if the times were tough, I am afraid the difficulty is that loans are made in earlier years, and when the depression times come the borrower, the mortgagor, is under pressure, and in many cases finds difficulty even meeting his regular payments. The mortgagee, the lender, cannot then adjust the loan and seek to get the borrower to increase his equity or security. Briefly, as I see it, a company of this kind must be set up strongly and must build up its strength so that it can, if need be, meet a period of quite serious losses. In a sense, it is like unemployment insurance in some respects.

Senator CROLL: I hope the experience is better than that of the Unemployment Insurance Fund.

Mr. MACGREGOR: Well, so far as the proposed strength of this company is concerned, I have mentioned the field in which it intends to operate, the residential field. So far as capital is concerned, the initial capital prescribed by clause 3 of the bill is $4 million which may be increased to $15 million, but under clause 5 the company could not commence business until $4 million had been subscribed and at least $1 million paid on capital account, and at least $1 million in addition paid as premium on capital or contributed surplus. So the company would start off with $2 million capital and surplus.

Senator MCCUTCHEON: Plus the call of $3 million?

Mr. MACGREGOR: That is right.

Senator ISNOR: Mr. MacGregor, may I ask a question to get this picture clear? This company would be operated in a more or less risk field of mortgages. How does this 83⅓ per cent advance with—

The CHAIRMAN: 66⅔ per cent.

Mr. MACGREGOR: Institutional lenders, including the life insurance companies and the federal loan and trust companies, may lend up to 66⅔ per cent of the value of the property,

Senator KINLEY: Mr. Chairman, I understand this insurance company will insure first and second mortgages. It will insure first mortgages as well?

Mr. MACGREGOR: It will insure the entire mortgage.

Senator KINLEY: It includes the unpaid principal amount of the mortgage loan as at the date of any claim under the contract, so it deals with both?

Mr. MACGREGOR: That is right.

Senator KINLEY: This seems to be an interlocked company. That is, the people who are forming the insurance company are also the people who are going to lend the money.

Mr. MACGREGOR: Not quite, sir.

Senator KINLEY: Well, they are interlocked. It has been said here that 49 or 50 per cent of it is to be owned by three parties, one of them being one

of the banks of this country. I am concerned about whether this is going to be of benefit to the public. I think it is, but there is no mention in the bill of the amount of interest that can be charged. I understood they were going to charge three-quarters of one per cent—

Mr. MacGregor: This company will not lend any money on mortgages. It will simply insure mortgages made by other lenders.

Senator Kinley: What will be charged for that?

Mr. MacGregor: For the insurance?

Senator Kinley: What will it cost the man who gets the money?

Mr. MacGregor: For the insurance or the loan?

Senator Kinley: Either, or both.

Mr. MacGregor: This company will have nothing to do with the rates of interest charged on the loans because it will not be making the loans. The loans will be made by other lenders.

Senator Kinley: And the other lenders are the mortgage companies, and they can charge whatever interest they think is right.

Mr. MacGregor: Yes. In this case they will be the existing lenders.

The Chairman: The conventional lenders.

Mr. MacGregor: Yes, the life insurance companies, and so on.

Senator Kinley: They are not controlled as to interest rates?

Mr. MacGregor: There is no maximum rate specified.

Senator Kinley: With respect to the insurance, somebody is going to have to pay for that.

Mr. MacGregor: The mortgagor will pay the insurance premium—the borrower or mortgagor.

Senator Kinley: Yes, the man who borrows the money.

Senator Croll: He pays it now under the N.H.A.

Mr. MacGregor: Yes, this is exactly the same.

Senator Kinley: What is that going to cost?

Mr. MacGregor: The premium tentatively considered is 2 per cent of the face amount of the loan, as a single premium for the whole term of the mortgage. A term of 15 years is contemplated. I am getting off the path a little bit and into details, but regardless of the term of the mortgage, whether it be 15 years, 20 years or even up to 30 years, the period of insurance proposed is the first 15 years, and the premium for that may be 2 per cent of the face amount of the loan.

Senator Kinley: That is the cost of the insurance?

Mr. MacGregor: Yes.

Senator Connolly (*Ottawa West*): That is, of the loan insured?

Senator Macdonald (*Brantford*): Is that the rate that Central Mortgage and Housing Corporation charges?

Mr. MacGregor: It is 2 per cent for homeowners and 2½ per cent on rental housing. In the United States, they charge one-half of one per cent annually on the outstanding balance of F.H.A. loans.

Senator Macdonald (*Brantford*): But in Canada with respect to Central Mortgage and Housing Corporation loans—

Mr. MacGregor: It is 2 per cent or 2½ per cent depending on the type of property, as a single premium.

Senator Kinley: This is a wide open bill. There is nothing in that clause that restricts them.

The CHAIRMAN: It gives them the power to carry on this type of insurance business.

Senator KINLEY: Yes, but our trouble is with respect to the amount charged for second mortgages. We think the public is being hurt by large interest rates on second mortgages.

The CHAIRMAN: This deals with the insurance of that second mortgage element.

Senator KINLEY: But it does not deal with the problem of second mortgages.

The CHAIRMAN: With insurance available it will make it easier for a person to raise that additional amount of money.

Senator KINLEY: Yes, I agree with that. But—

Senator THORVALDSON: Would it not be wise to let Mr. MacGregor make his statement?

Senator KINLEY: I am asking a question, and I want to finish it. You find in clause 7 of the bill "the unpaid principal amount of the mortgage loan as at the date of any claim under the contract", and then "reasonable charges relating to the mortgaged property for public utilities, insurance premiums and real property taxes and rates", and then "reasonable legal fees". If it is an interlocked performance there should not be all those charges in order to give a man a little extra money on a mortgage when it is insured. It seems to me that there should be some control over these operations.

Mr. MACGREGOR: Really, this company intends to operate, Senator Kinley, in the same way that Central Mortgage and Housing Corporation presently operates in insuring N.H.A. loans. It will charge a premium for the mortgage insurance. If that premium were 2 per cent as I have indicated, as a single premium for insurance covering a term of 15 years, then dividing the 2 per cent by the 15 years points to an annual cost of about 0.13 of one per cent. The effective rate, of course, would be about double that because the outstanding balance is coming down all the time. At the most, in round figures, one would say that the effective charge for the insurance would work out to about one-quarter of one per cent per annum as an additional cost in connection with the mortgage.

Senator KINLEY: Is this figure of 2 per cent for 15 years obligatory?

The CHAIRMAN: You will not get the insurance if you do not pay the premium.

Senator KINLEY: I see that, but we are trying to be efficient and to see that this bill protects the borrower. It is all right, but it is no remedy for anything—except that we have men and strong organizations behind it, like the banks and the big institutions sponsoring it, and they want to make a success of it, and they will want to make it as cheap as possible. But, that is all we have.

Mr. MACGREGOR: May I say, Senator, that I think the success or otherwise of this whole operation, looking at it from the borrower's point of view—and I think it is he with whom you are most concerned—will be determined mainly by the rate at which he can get his loan. The insurance charge is almost incidental in connection with that. It is true that the premium is not specified in the bill, but, then, premiums are never specified in the acts of incorporation of any insurance company.

Senator KINLEY: Except that in the Bank Act there is a maximum of 6 per cent.

Senator THORVALDSON: A rough calculation indicates that on a loan of $20,000 the annual premium would be about $25 a year, which is pretty small, to my mind.

Mr. MacGregor: It will be 2 per cent of the face amount.

Senator Thorvaldson: Yes, that is $400, and dividing $400 by 15 works out to about $26 a year.

The Chairman: But the borrower, instead of being able to borow only 66⅔ per cent may, with this piece of paper called insurance covering an extra 20 per cent, be able to do reasonably well in borrowing that extra amount up to 83⅓ per cent, or whatever it is.

Senator Croll: Mr. MacGregor, would you care to draw an analogy with the N.H.A. experience over the period since 1939 when they began to charge 2 per cent? What has been their experience over the time, and what fund have they laid aside? That fund, I think, is a special fund. What is the amount laid aside there at the present time? I think that is a matter of public record.

Mr. MacGregor: We have some figures, Senator Croll, but I was just wondering—they were given to us on a confidential basis, and I do not know whether I am at liberty to disclose them.

Senator Croll: I think I saw it once in the book. If the information was given to you on a confidential basis then I do not want to hear it.

Mr. MacGregor: Briefly, they only started to insure mortgage loans in 1954.

Senator Croll: Yes, I think you are right.

The Chairman: I think you could say that their experience has been very good.

Mr. MacGregor: Without quoting absolute numbers, because I think it is the proportions that you are interested in—and I would point out that the experience at Elliot Lake was different from that in the rest of Canada. Excluding Elliot Lake the number of foreclosures, or the number of cases where the property has been taken over by C.M.H.C., is a little less than one-half of one per cent of the total number of insured mortgages that have arisen since they started insuring loans in 1954. Even if you include Elliot Lake, the proportion of the total loans insured up to date that have been foreclosed comes to a little over one-half of one per cent.

Senator Croll: I am of the view, from reading the report of C.M.H.C., that somewhere the funds set aside for this special purpose appears. I cannot recall it at the moment, but it is quite a large sum.

Mr. MacGregor: All they do is credit the premiums they collect to this separate account or fund, and charge losses to it. Now, of the foreclosures that have arisen up to date, which total somewhere between 2,000 and 3,000, I think they have sold about two-thirds of the properties, and in every one of those cases they have not suffered any loss. But, of course, the losses are more likely to arise on the other one-third they still have and have not yet sold; and it remains to be seen what they will get for them.

Senator Croll: You are not evading my question; you are just not answering it.

Mr. MacGregor: I am sorry.

Senator Croll: I am trying to find out how much money is in that special fund that came as a result of the premiums paid by the borrower?

Mr. MacGregor: We have not the figure, senator. Mr. Humphrys tells me it is in their annual report. However, the size of the fund alone does not really tell you the inner story of the state of the fund because nothing is disclosed about unearned premiums that are still in the fund and are held against foreclosures that have yet to arise.

Senator Croll: I understood they did that originally. I understood they took the 2 per cent that they charged and put it into the special fund.

Mr. MacGregor: They still do.

Senator Croll: That fund is of considerable proportions, and the losses against it are almost nil. Their experience has been from 1954 to 1964— 10 years?

Mr. MacGregor: Yes.

Senator Croll: We have some idea of the amount of business they get, on their basis, which is not, of course, as good as this basis: but what is the size of the fund?

Mr. MacGregor: I do not know the size of it, but even if one did, it would not alone indicate whether, or to what extent they are ahead of the game or behind the game, because they do not disclose their liabilities.

The Chairman: There are unearned premiums?

Mr. MacGregor: Yes. They have collected a lot of premiums covering future insurance on loans that will run on for years yet and in respect of which defaults may occur goodness knows when. Up to date the experience has been good. At least, there is every indication it has been good.

The Chairman: It has been excellent.

Mr. MacGregor: At the same time, from press reports the number of defaults has been increasing in the last year or two, and the same reports are received from the U.S.A. Recently there was a report of a long speech made by the president of one of the largest U.S. life companies pointing to increasing defaults in the mortgage field.

May I return, then, to some of the safeguards I desire to point to in this company? I mentioned its capital, which is relatively strong. Its proposed field of operations is the residential area, which is the better part of the field. However, there is a particular provision in clause 7 that I would draw the committee's attention to. It appears there as a proviso. After giving the company power to do mortgage insurance, the proviso states:

> Provided that every such contract of mortgage insurance shall contain—

—it is mandatory—

> —a provision to the effect that the company may, at its option, limit its liability thereunder to twenty per cent of the aggregate of the following items—

Briefly, the intention is that the maximum loss that this company will insure would be limited to 20 per cent of the outstanding balance of the loan and not the whole of the loan. This is in accordance with the practice of the company in Milwaukee I referred to, where they really cover the top 20 per cent of a loan.

Senator Hugessen: On that point, I am not quite clear. The premium you talked about a few minutes ago, 2 per cent, is that on the whole loan or charged only on the percentage which the company undertakes to cover?

Mr. MacGregor: It is charged on the whole loan.

Senator Hugessen: So it is really more like 10 per cent so far as this company is concerned?

Mr. MacGregor: Yes. One could relate it that way. It is 2 per cent of the whole indebtedness.

Senator Davies: Whenever an instalment is paid off the premium comes down?

Mr. MacGregor: No, it is a single premium, paid at the outset. That 20 percent limit is one additional safeguard that is proposed to be written into

the bill. The top 20 percent is where the losses in the main occur. If a loan goes so sour the lender suffers a larger loss, it is pretty sour indeed.

Senator CROLL: If I understood your answer to Senator Hugessen, it is that for the 2 per cent they are really gambling on the 18 per cent they are increasing over and above the 66⅔ to 83⅓.

The CHAIRMAN: Because of the insurance.

Senator CROLL: Because of the insurance, and all they are covered for is the difference between 66⅔ and 83⅓, for which they are paying 2 per cent.

The CHAIRMAN: They are covered for 20 per cent, according to this formula.

Senator CROLL: The 20 per cent merely covers that.

The CHAIRMAN: It covers more.

Mr. MACGREGOR: The top 20 per cent of the outstanding balance will continue to be insured even after the loan is repaid below 66⅔ per cent. Even after the aggregate indebtedness comes down from 83⅓ to 66⅔ per cent, the insurance will apply to the top 20 per cent of the remaining balance.

Senator MCCUTCHEON: The Company may take over the property?

Mr. MACGREGOR: Yes, I was coming to that point. The way this insurance is carried on and, of course, all this would be spelled out in its contracts, the loans will be made by recognized lenders, though I do have something to say on that; but so far as the administration of the mortgage insurance is concerned, whenever a loan is three months in default then the lender must notify the mortgage insurance company of the fact of default and give the particulars. If the default continues for an additional three months—in other words, if the loan is six months in default—then the lender must foreclose, unless arrangements are made otherwise. These are details of the arrangements, but if a claim is made—and this is the important point so far as this insurance company is concerned—because of the default of a borrower, then the mortgage insurance company would have two options. It could either pay the whole of the indebtedness plus these other items enumerated in the lettered items in clause 7 to the lender and take over the property; or the mortgage insurance company, at its option, could pay the lender 20 per cent of these items, and that is the end of it.

Senator CROLL: Mr. MacGregor, just draw the picture for a moment. The insurance company makes a loan on the basis of 66⅔, is that correct?

Mr. MACGREGOR: This is a difficult area, and I purposely kept away from it so as not to confuse these other issues, but that is the other side of the coin—who puts up the mortgage money? I was trying to keep my remarks within the insurance company for the present.

Senator CROLL: Would you cover that?

Mr. MACGREGOR: I can deal with your point now, if you wish.

Senator CROLL: All right.

Mr. MACGREGOR: That is the first point that arose in our minds: Where is the mortgage business going to come from that this company will insure? In the U.S.A., to a certain extent, there is a ready-made field among the loan and savings associations which have power to make loans of up to 90 per cent. These mortgage insurance companies have not in the United States been operating in connection with the institutional lenders like life insurance companies and so on, because their mortgage lending powers are restricted in the same way as ours. They cannot go above 66⅔ or 75 per cent. In Canada that is the first question that arose in our minds: Who is going to make an 83⅓ per cent loan? One of the safeguards in this mortgage insurance business is

that loans should be arranged through a recognized, dependable mortgage lender, so that everything is done according to Hoyle, so that loans are properly processed and documented, and made on a sound basis.

The mortgage insurance company is not going to do more than spot check loans. It is not going to make independent appraisals in every case, and go to all the expense the mortgage lender itself normally does. So in the States, if I may go back to that country, a lot of these insured loans are made through the loan and savings associations. These are the loans that are insured in the main, and the mortgage insurance company relies on the practices of the loan and savings associations.

In Canada, the life companies and the loan and trust companies, in general, cannot lend more than two-thirds of the value of the property. So, the second mortgage money has to come from some other source, and as part of this parcel the promoters intend to seek incorporation of an investment company that would raise money by the issuance of debentures to the public for mortgage lending purposes, and this other investment company would provide the second mortgage money. But the whole arrangements for making the loan would be conducted by a life insurance company or a loan or trust company. Such company, that is the regular institutional lender, would make a first mortgage up to two-thirds but would administer a second mortgage jointly, much in the same way as some trust companies now administer the 80 per cent mortgages I spoke about earlier.

Senator CRERAR: Perhaps you wouldn't care to pass an opinion on this, but would the idea be to make the whole proposal more alluring to a stupid or inexperienced individual seeking a loan?

The CHAIRMAN: I wouldn't think so, senator. I wouldn't think so.

Mr. MACGREGOR: I think the whole objective of the scheme is to find second mortgage money and make it available at a more reasonable rate, and without attempting to say anything on behalf of the life insurance companies or loan and trust companies, I don't think that they want to get mixed up in any scheme whereby borrowers might be soaked. None of the reputable companies would do so.

Senator CRERAR: I think a matter of this kind must depend on the person seeking the loan in the first instance. He may be a very optimistic individual, and he may go on making payments for five, six or seven years, and then misfortune overtakes him, and he has to drop the whole thing. Then he has a sense of grievance against society even though it is his own fault, and he thinks that he has been unfairly used. This I would consider to be a very undesirable state of affairs and should be avoided if possible but I don't know how it can be done. The person who makes the original loan for a long period at 6 per cent is the party that should weigh the moral quality or the capability of a person seeking a loan.

Mr. MACGREGOR: That is what is done now, and what will be done under this scheme.

Senator CRERAR: What is in my mind is that all this may incline people to take more risks by saying that it is not important because the loan is going to be insured anyway.

Mr. MACGREGOR: I think there are safeguards in that the first mortgagee is in large measure a co-insurer. However, I might mention that the life insurance companies and the trust and loan companies will not be shareholders in this mortgage insurance company so there will be no conflict of interest.

Senator HUGESSEN: If a company lends 66⅔ per cent and the other finance companies lend the remainder, does the mortgage insurance relate to the entire amount?

Mr. MacGregor: It relates to the whole loan, the aggregate indebtedness, but the maximum claim is limited to 20 per cent. At the outset it would cover the 16⅔ per cent which is the second mortgage, that is, 20 per cent of 83⅓ per cent, but as the loan is repaid the mortgage insurance would apply to the whole outstanding balance from time to time.

The Chairman: The top 20 per cent of it.

Senator Connolly (*Ottawa West*): What did the Chairman say?

The Chairman: The top 20 per cent of the outstanding balance would be insured at all times.

Senator Thorvaldson: Supposing the loan is paid, it would be 16 per cent in the first five years, and the insurance policy has still 10 years to run, and it will continue on what you call the top 16 per cent owned by the conventional insurers.

Mr. MacGregor: I might mention there is a difference of opinion amongst the lenders as to how they would like to see the second mortgage element repaid alongside the first. I could name one lender that would like to see the payments of the borrower applied in their entirety to the second mortgage until it is all repaid thereby enabling the first mortgage to continue longer at maximum amount. That is not the usual attitude. Most lenders would want to see the repayments of the borrower applied from the outset in part to repay the first mortgage and to the extent of the remainder to repay the second mortgage.

Senator Pouliot: To use a simple comparison, don't you think that too many cooks spoil the broth?

The Chairman: At times, yes.

Mr. MacGregor: Yes, I do, sometimes, senator. Briefly, Senator Hugessen, the answer to your question is that the insurance applies to the whole indebtedness, but the maximum loss is limited to 20 per cent of the aggregate indebtedness, whether in the hands of the first or second mortgagee, unless the mortgage insurance company takes over the property in which case it pays off the whole indebtedness.

Senator Croll: The lender will administer the whole thing.

Mr. MacGregor: The first mortgagee.

Senator Croll: The total mortgage. Then the man who applies for the mortgage will deal with the first mortgagee or trust company, who will then make available to him the difference between 66⅔ and 80 per cent?

Mr. MacGregor: The proposed new investment company will advance the difference.

Senator Connolly (*Ottawa West*): The proposed new investment company to be incorporated will probably name other persons who have mortgage money available.

Mr. MacGregor: It could be that this company will later be prepared to deal with the public at large as lenders but at the outset they intend to confine its operations to loans administered through institutional lenders.

Senator Croll: I am not at all clear on this. An application is made for a loan, and a loan is granted and a man wants more money than a lender gives him. He finds out in some way or other that there is a company doing business who is prepared to give him more money.

Mr. MacGregor: He won't have to go beyond a life insurance company or loan or trust company. They will know of the facilities available in this investment company to be incorporated.

Senator Croll: Then they are either prepared to act as administrators of the second mortgage or they are not at that point.

Mr. MacGregor: That is right.

Senator Croll: Now it seems to me you are in a pretty tight ring.

Mr. MacGregor: It is exactly the same situation as now exists in several trust companies where they are administering loans up to, say, 80 per cent of the value of the property; the trust company furnishes two-thirds of the value and some other second mortgagee operating in association with the trust company makes available the second mortgage.

Senator Connolly (*Ottawa West*): Is it right to say at the present time he is not able to get insurance on that?

Mr. MacGregor: That is right; that is the purpose of this company. If one can get insurance, it is hoped that the rate of interest payable on that top amount would be substantially reduced.

Senator Croll: I am impressed by the fact that the Bank of Nova Scotia is going into this and other reputable concerns. But are we not likely to get other banks going into this too? They are not likely to sit by and watch this being gobbled up.

Mr. MacGregor: It remains to be seen how much business they will have to do and how much second mortgage money can be raised by this proposed investment company. Time alone will tell. On the particular point you raise, no one likes to see a monopoly in any field. At the same time, as far as the department is concerned, I would like to see one good, substantial mortgage insurance company operating for a while, feeling its way, seeing what the problems are, and seeing what demand there is for this kind of insurance, before we have other mortgage companies getting into this relatively unknown field.

I think the worst thing that could happen would be to have a lot of companies in it, each cutting one another's throat for business, cutting rates and so on. My main concern is that this company will be successful as an insurance company first and at the same time will accomplish its object of reducing the cost of second mortgage money.

Senator Campbell: Mr. Chairman, in order to simplify the practice here, is it not true that what really would happen in practice is that the person applying for a loan will make application to an institutional lender, not for 66⅔ per cent but for, say, 83⅓ per cent of the value of the property. The institutional lender will be able to tell him whether or not he can get that loan on the condition that he pays an insurance premium, and that in effect is all that is happening; rather than running all over the place to borrow money, the borrowers will be able to go to various institutions and they, working with the proposed investment company, will be able to say we will grant you this loan on the basis of 75 per cent of the property's value or whatever it may be.

Mr. MacGregor: That is it exactly.

I would be disappointed if some of the regular fire and casualty insurance companies were attracted to this field. I would far rather see one specialty company wet its feet and prove itself. I certainly would not look forward with any anticipation, with any pleasure, to regular fire and casualty companies getting into it because if they were to get into difficulty, it would affect their other policyholders as well.

Senator McCutcheon: They have enough trouble as it is.

The Chairman: We will assume that.

Senator Pouliot: Mr. MacGregor, I have been listening attentively to you for the last hour, and with interest. What I have understood so far is that there are two systems—one system is a self-contained mortgage company and the other system is an investment company that feeds the mortgage company. What

is the best system, according to you? Is one going to be obliged to go from pillar to post to have something or is it not better to get it from the one place?

Mr. MacGregor: In this case, if the plan works out as intended the borrower will get all his money in the one place. He will go to a life insurance company or to a loan or trust company and say, "I want to buy a property for such and such an amount and I have so much money myself." Looking at his circumstances it is evident that he needs a loan of perhaps 80 per cent of the value of the property he proposes to buy. The life insurance company will say, "We can not lend you more than 66⅔ per cent but we have facilities here, in association with this other investment company, whereby a second mortgage for the additional amount will be advanced by that company; and we do it all here, we make all the arrangements, you will pay us and won't have to go from pillar to post trying to find second mortgage money".

Senator Hugessen: But he will have to pay the premium on the insurance policy?

Mr. MacGregor: That is correct, but instead of having to pay 13 per cent or 14 per cent for his second mortgage money, as he probably otherwise would, he would get the whole loan at about one-quarter of one per cent more than the going rate.

Senator Pouliot: Mr. MacGregor, according to your experience and good judgment, which system is the best?

Mr. MacGregor: I think this proposed system would be a great improvement over existing conditions where a borrower seeking a loan finds he can only get part of it from a regular lender who tells him, "You will have to find the rest yourself, wherever you can" and he will probably have to pay a good high rate of interest for it.

One might think that this situation could all be solved by extending the lending powers of life insurance companies and loan and trust companies beyond the two-thirds limit to which they can presently go, to say 80 per cent or 90 per cent.

Senator McCutcheon: In that case there would still be a field for this company?

Mr. MacGregor: Yes, they would insure loans directly. But I do not think there is justification for going above the 66⅔ per cent to any extent, as yet, anyway.

Senator Croll: Mr. MacGregor, I can understand the Bank of Nova Scotia, very progressive and they have money, they deal in money, and I can understand Greenshields being in it, they are going to sell to the public, as you have indicated, the issue of the second company. But what is the Aluminum Company doing in this? It just runs through my mind—will they have to use aluminum products to get the 83 per cent?

Mr. MacGregor: No, Senator Croll. The Aluminum Company is represented here and can speak for themselves, but my understanding is this: They are interested in seeing additional building of new houses in this price range, from $20,000 to $30,000 and seeing aluminum used, but they have also expressed to me a feeling that apart from supplying building products, as they do, they should contribute something toward improving conditions in the area where they are particularly interested.

Senator Davies: This investment company you have already referred to, is it operating now?

The Chairman: It is to be incorporated.

Senator Davies: Has it to be incorporated by an Act of Parliament?

Mr. MacGregor: No. But if it were an ordinary lending company it would not have power to go beyond 66⅔ per cent of the appraised value.

Senator Connolly (*Ottawa West*): Mr. MacGregor, this may not be a question you care to answer, and perhaps I have not had time to think it through. This policy is going to insure direct loans, one being a first mortgage and the other a second mortgage. Now what about the amortization?

Senator McCutcheon: The whole loan is a first mortgage loan. It is wrong to talk about a first and second mortgage, it is the one mortgage.

Senator Connolly (*Ottawa West*): My whole question is predicated on the fact that there are two mortgages.

Mr. MacGregor: In practice it will be administered pretty much in the way the old Dominion Housing Act loans were administered.

Senator Connolly (*Ottawa West*): I am not concerned too much about the administration, but what I am concerned about is what is the charge on the title of the property?

Mr. MacGregor: In fact, there will be a first lien, and the second will rank subsidiary to the first.

Senator Connolly (*Ottawa West*): It is just this, because, during the depression days, when there were second mortgages on properties, the first thing in foreclosure proceedings was to wipe that man out unless he redeemed the first mortgage and then go on and foreclose. Perhaps Senator McCutcheon wants to go on to discuss the question as to whether there are two mortgages or not, so I want to ask you this question: Assuming that there are two mortgages.

Senator Campbell: Excuse me, Mr. Chairman, just to answer Senator Connolly's question I have just confirmed the fact with Mr. Fleming that this is a joint mortgage. There will not be two mortgages. As far as the title is concerned it will be a joint mortgage taken in the name of the conventional lender and mortgage investment company and it will be administered by the conventional lender.

Mr. MacGregor: But the part advanced by the investment company under the joint mortgage will rank subordinate to the other part.

Senator Connolly (*Ottawa West*): Perhaps my question dissolves now because what I was concerned about was whether or not the rate of amortization on the so-called second mortgage would be the same as for the first mortgage.

Mr. MacGregor: That was the point I had in mind a little while ago where the views of the lenders differ a little. Some would like to see the whole of the second lien repaid first, but the more usual practice would be that the repayments by the borrower would be applied in part to one and in part to the other from the outset.

Senator Connolly (*Ottawa West*): On a pro rata basis?

Mr. MacGregor: That remains to be seen.

Senator Connolly (*Ottawa West*): If there is foreclosure it is going to be taken in the name of the two lenders.

Mr. MacGregor: That is right. One thing we in the department want to insure is that the first mortgage is advanced only to the extent of two-thirds of the value of the property by the life insurance company or loan or trust company because that is as far as their power extends.

Senator Connolly (*Ottawa West*): I think this procedure is much better; otherwise the load on this company might be so great that it would easily fail because if it were in the position of insuring a second mortgage and the second mortgagee had to go and redeem that first mortgage then there may be an impossible financial position.

Senator MACDONALD (*Brantford*): I would like to get this point cleared up. I was under the impression that this company was being incorporated to insure second mortgages generally.

Mr. MACGREGOR: No, sir.

Senator MACDONALD (*Brantford*): Now from what you have said I take it that it is to insure second mortgages which have been placed by this company to be incorporated. Is that correct?

Mr. MACGREGOR: The intention is really to insure the aggregate indebtedness, the top 20 per cent of the aggregate indebtedness, where the initial aggregate goes beyond the usual limit of two thirds.

Senator MACDONALD (*Brantford*): Let me put it this way. There is a mortgage on property to the extent of two thirds. Someone wants to get a second mortgage to bring it up to 85 per cent. They do not go to the investment company: they go to a private lender. And the private lender will advance the second mortgage. Will this company insure that second mortgage?

Mr. MACGREGOR: It is not its present intention to do so. It will operate through the regular institutional lenders, rather than with individuals and the public.

Senator MACDONALD (*Brantford*): Say institutional lenders—supposing one trust company has the mortgage, the first mortgage, and another, say an insurance company, takes a second mortgage—will this company insure that second mortgage?

Mr. MACGREGOR: I am not sure that I can answer that, Senator Macdonald. I would guess that in those circumstances the whole situation would be rearranged, as regards the first mortgage and the second mortgage, through the investment company, just as if a new loan were advanced. I would prefer that Mr. Fleming should deal with that.

The CHAIRMAN: We are going to hear him afterwards.

Mr. MACGREGOR: He could deal better with those internal arrangements.

Senator MACDONALD (*Brantford*): The principle I was getting at was whether this company was to insure the second mortgages, no matter from where they are obtained.

Mr. MACGREGOR: No, that is not the intention.

I might summarize the feelings of the department very briefly by saying that it does appear that the objective of this proposed scheme is a very praiseworthy one. Our main concern in the department is that we will have to supervise a mortgage insurance company, a kind of company that has had a pretty checkered past.

I believe that we have suggested safeguards in this case that should provide a good chance of success.

It is our intention also to recommend to the minister, if the company is incorporated, that when it is registered, a condition be put in its certificate of registry that will limit its aggregate mortgage insurance in relation to its capital and surplus. We propose to recommend that the aggregate mortgages insured, that is, the top 20 per cent, in the aggregate shall not exceed ten times the available paid capital, surplus and special or contingency reserves of the company. It may be that, in the light of experience over the years, such limit could be relaxed somewhat; but I think that at the outset one can only play safe.

Senator GELINAS: Is it the intention to make some of this capital stock available to the public, if not now, at a later date?

Mr. MACGREGOR: I believe so. I mentioned that the three large organizations intended to retain control, but I think they intend to offer some to

pension funds, to the Canadian Enterprise Development Corporation or to the public. Again, however the promoters might speak on that point themselves.

I think it is desirable that the stock be not distributed amongst very small public investors. I think this is a kind of company that should remain in the hands of substantial shareholders. If more capital is needed, it may have to be supplied fairly quickly and one wants to see it readily available.

The CHAIRMAN: Gentlemen, we have a number of representatives supporting the bill. I understand that the Honourable Mr. Fleming is to be their spokesman in the first instance. Mr. Fleming.

Hon. DONALD FLEMING: Mr. Chairman and honourable senators, thank you for the privilege of appearing before you this morning in support of this Bill S-50.

Mr. MacGregor has covered so many of the points comprehensively this morning, and Senator Campbell, in his remarks in the Senate yesterday afternoon gave such a comprehensive statement in regard to the purpose of the company and the way it is proposed to function, that I think I can be a little more brief than was my wont.

My first observation, Mr. Chairman, is that this is a model bill, which has one addition, simply the addition to the words of clause 7.

Attention has been drawn to clauses 4 and 5 of the bill, but I make this first observation—this is simply the model bill provided for in our insurance legislation, with one addition. That addition is in the proviso in clause 7.

That proviso has been worked out with the Department of Insurance. That has been, as have all the other elements in the proposal and project, the subject of extended discussions with the Department of Insurance.

I want to express my appreciation to Mr. MacGregor and Mr. Humphrys for the very patient way in which they have been dealing with this matter in great detail now over a period of some months. We have had to work in very close co-operation with them because, as has been said, this is in effect a venture into a new insurance field.

Clause 7 does describe the type of business that this company is to do. It is to be authorized by the bill, if approved, to engage in the business of mortgage insurance.

Our insurance legislation does not refer to mortgage insurance as such but it does make provision for credit insurance, and mortgage insurance is one kind of credit insurance.

I stress the fact, Mr. Chairman, that this company will be authorized to engage in this form of insurance, mortgage insurance, and it alone. There is no thought of asking power to go into other forms of credit insurance. This was a matter of axiomatic importance in our discussions with Mr. MacGregor.

Mr. MacGregor's feeling at the outset was that a company launching into a new field should confine itself to this new field and to it alone. And this is the basis of this application.

A word as to mortgage insurance in general. Reference has been made to the favourable experience of some of these companies in the United States which have been operating in recent times. Reference has been made to an earlier period in Canadian history. It is something like 40 years ago that what might be called the first experiments in a form of mortgage insurance in Canada were carried on. And one does not pretend that these were successful experiments. They failed.

This has coloured not only Mr. MacGregor's approach to this question but our compliance with views and proposals and suggestions which have come from the Department of Insurance in our discussion over this period of some months. In a sense, this company is proposing to pioneer in a new field.

Again, it is axiomatic in Mr. MacGregor's approach that any company proposing to pioneer in this new field, particularly in the light of the experience of 40 years ago, should have adequate financial strength. This, Mr. Chairman, is the background of the present measure.

We have brought before you a measure that is put forward by companies which have adequate financial strength to assure that, if mortgage insurance can succeed in Canada, this company will be able to succeed. This measure is put before Parliament not simply as a measure to bring profit to those concerned. It is put forward as a measure which is capable of bringing substantial public benefit.

Perhaps it will not be amiss if I stress several facts. First of all, there have been many public revelations in recent times of the extent of the abuses that exist in this second mortgage field in Canada.

There have been public inquiries under legislative auspices on this subject and I think it not an exaggeration to say that what has been disclosed has in many cases been a shock to the public.

There have been those who said: "Well, either we should put public funds into this field or, somehow or other, more responsible elements of private enterprise ought to enter this field; because how otherwise are you going to clear up the abuses?"

There are people who in their extremity need money and are prepared to deal with those who charge a high rate of interest, and to comply with what most of us would regard as intolerable conditions.

Now, here is a response on the part of the responsible elements of the financial and industrial and investment community in Canada to this situation, and with respect I say that this is worthy of parliamentary encouragement. In the first place, it will afford an opportunity of relieving many people. It will not eliminate second mortgages entirely, and it will not eliminate all the abuses in this field. We have not reached that position yet. But it will greatly reduce the extent of operations in this field which have given rise to abuses. In the second place, and here I confess I was surprised at what the company believes, or the clients believe, they can do in this field, in relation to the interest rate.

Now, we have had revelations that interest rates on second mortgages have gone, let us say, to almost astronomical proportions and ordinary rates charged by more responsible persons operating in the second mortgage field have been, let us say, at least commensurate with the degree of risk attached to second mortgages. Something here depends on the nature of the property, upon the size of the first mortgage, the extent of it, and other considerations of that kind. But here is a situation where if the mortgage can be insured it is the belief of those concerned—and this is the product, I must say, of extensive study—that it will be possible to offer this combined or joint mortgage—call it a package mortgage if you like—with an institutional lender and a mortgage investment company participating in the manner indicated, at a rate of interest we think about one quarter of 1 per cent above the prevailing rate on conventional mortgages that are first securities.

The current rate on conventional loans, or first mortgages, varies in some places. It is running in the neighbourhood of $6\frac{3}{4}$ to 7 per cent. For a borrower to be able to increase the amount of his borrowing on his property from $66\frac{2}{3}$ per cent to $83\frac{1}{3}$ per cent; in other words, to cut the equity in half, because the $83\frac{1}{3}$ per cent simply cuts the equity between $66\frac{2}{3}$ per cent and 100 per cent in half—if you are able to do that and increase to $\frac{1}{4}$ per cent I must confess that would be a very great surprise. Admittedly this means that the institutional lender or life insurance company or mortgage or loan company is going to get the conventional rate and that extra one quarter of 1 per cent will go to compensate the mortgage investment company who is taking that type of slice of risk he is running, and in that sense it means $1\frac{1}{4}$ per cent on the $\frac{1}{5}$ he is

contributing. But what is $1\frac{1}{4}$ per cent alongside the kind of premium rates that are being paid by borrowers today for second mortgage money? It is a drop in the bucket. So much for that. This becomes possible only through the agency of insurance, because we are operating in a risk field here, and unless insurance is available in this kind of project, the project simply will not go forward. I am in a position to say that it all hinges on the provision of mortgage insurance.

There is a third advantage which I think can be claimed, Mr. Chairman and honourable senators, for the project that is put before you today. It has come out during the course of the questions which were put to Mr. MacGregor: the advantage to the borrower being able to deal with one source when he needs his money, and that a very responsible source. He will be dealing with your institutional lender, the mortgage departments of your life insurance companies, mortgage loan trust companies, and he will be spared all the trouble or the confusion of going shopping about for a second mortgage after having arranged his first mortgage. He is saved the expense of two mortgages. There will only be one mortgage, this joint mortgage. There will not be two sets of solicitors fees to be paid, after both have searched the title and certified it for their respective clients—the first and second mortgagees. So I think there is great protection in this situation for your borrower. There is great saving to him in the matter of normal expense attendant on the first and second mortgages.

Now, may I make a comment on the relationship with the institutional lenders? Obviously a project of this kind could not have been launched unless there were some reasonable assurance of co-operation on the part of the institutional lenders. They are the approved lenders under the National Housing Act and they are our principal institutional lenders in the field of conventional loans. They have a great deal of experience. They set out these applications, and their services in this respect will continue to be available. The mortgage investment company is not going to set up a lot of machinery to review these reviews by the institutional lenders. The mortgage insurance company is not going to do that. This would duplicate or triplicate expense. That is not the intention. Again, simplification is of the very essence of this enterprise. Everything is channelled through your institutional lender, who in all cases is a responsible body under the law responsible to the Department of Insurance; and with the simplification I venture to say there will be benefit to your mortgagor.

We have had extensive discussions with the institutional lenders. A tremendous amount has been done on this. We apologize to the Senate for bringing this measure forward at such an advanced stage of the present session, but believe me, honourable senators, it was not possible to bring this matter forward at an earlier date or it would have been. There have been scores and scores and scores of discussions with those who are operating in this field today under legislation of Parliament and under supervision of the Department of Insurance.

Perhaps I should confine myself, Mr. Chairman, at this point, to two concluding observations, or if you will permit me, I might make perhaps one or two comments on points which Mr. MacGregor made this morning. It may be that some honourable senators drew the impression from Mr. MacGregor's remarks that it is the intention of this company to confine itself to larger mortgages over and above the present limits under the National Housing Act today. With respect, this is not the intention. Of course, this is one field in which this company could operate; but there is no thought, I may say, of insuring any mortgage or any one single dwelling beyond $35,000, which is the limit of loan in the case of any single residence. But there is the whole field of conventional lending, and it is in this field that we see fruitful opportunities for a company of this kind to operate both in relation to the joint operation of your institu-

tional lender, your mortgage investment company, and then for the mortgage insurance company to operate in insuring that kind of loan.

Secondly, may I say that if there are any questions in the minds of honourable senators on this project, the three sponsors of this bill are entering in this project together and they intend in equal proportions, as has been said, to retain control of this company. This is a Canadian company. It is controlled in Canada, its management will be Canadian; and there will be no departure from that. We have taken the trouble to acquaint ourselves with the manner of operation of these companies in the United States. We know how they are operating and we can have the benefit of their experience in this field. I think it will be a matter of interest, if not too much of an embarrassment to the gentleman in question, to say that Mr. Secord, who has lately retired after a period of eminent service in the C.H.M.C., is entering the service of this new company as a consultant. His long experience will be available.

I would not be fair to this presentation if I did not stress the extent to which we have complied with Mr. MacGregor's concern as to the strength of this company in taking every possible means open to us to ensure there will be no default on the part of this company.

Mr. MacGregor has done his duty manfully in this respect. It has been a matter of concern. In this new field he was greatly concerned that we should not at any time, even under pressure or changed conditions, make default. Consequently, the whole tenor of the terms attaching to this project have been such as to stress care and, if I may be pardoned the use of this word with a very small "c", conservatism. The stress has been—

The CHAIRMAN: And not with the full implications of the word?

Hon. Mr. FLEMING: Yes, Mr. Chairman, and in that respect you and I are both followers of the liberal arts and sciences.

There are four types of restriction that I would like to stress as indicative of the way in which the applicants have readily accepted the idea of restriction in order to serve this goal of ability to meet extraordinary pressures.

As Mr. MacGregor has said, when times of stress come in this field it is not likely that they will be nicely or evenly distributed over a period of years. You may have a period of sudden impact. I do not think any of us expect there will be the kind of impact that was felt in this field in the days of the great depression. However, with that recollection in mind steps have been taken which, I think, may be regarded as quite extraordinary steps, to assure the strength of this company to meet any period of extraordinary stress.

First of all, there is a limit to 83⅓ per cent of the appraised value of the property. There was some talk at the beginning about going up to as high as 90 per cent, but after our discussions we have confined this upper limit in the program that the company proposes to 83⅓ per cent of the appraised value. In other words, it is one-fifth or 20 per cent of this joint or package mortgage.

Second, there is a limitation on the class of property to be insured. Mr. MacGregor referred to the more serious incidents of loss in the case of mortgages on the commercial properties in the depression days. Well, this company does not propose to insure mortgages on commercial properties. It proposes to operate in the field of owner-occupied single family homes, and semi-detached homes.

Here, if Mr. MacGregor will forgive me, I think he went a little far this morning when he spoke about four-family buildings. This was mentioned in the earlier stages, but in the course of discussion we agreed to confine ourselves to the single owner-occupied family house, and semi-detached, which would include duplexes.

Thirdly, we will be confined, as the bill indicates, to a mandatory provision in the policy to a risk of 20 per cent of the outstanding balance of any

mortgage including interest. Then, as has been said by Mr. MacGregor, we had extended discussions about the whole policy in regard to reserves—premium reserves, policy reserves and investment reserves. We have been into all these subjects at considerable length, and, as Mr. MacGregor has said, he proposes to make it a term of the licence to be issued to this company in due course should this bill be adopted, that the maximum risk amount shall not exceed ten times the sum of the company's capital service and policy reserves exclusive of unearned premium reserves.

Senator BOUFFARD: Would that be assured by bonds of the company?

Hon. Mr. FLEMING: It would have nothing to do with bonds. It is the company's capital, its surplus and its policy reserves.

Here, again, the care that has been taken is emphasized by the fact that you are starting off with a very substantial contributed surplus. It may be that some honourable senators would like to see a freer policy here. Well, the stress has been on assuring that as far as human ingenuity can do it that no one who insures through this company will suffer a default even under pressures of extended mortgage defaults. So, Mr. Chairman, with respect, I think one can say that in pioneering in this field those concerned have shown a commendable sense of public responsibility, and have readily and willingly submitted to far-reaching safeguards with a view to assuring the success of this new type of business in the public interest.

Senator PEARSON: May I ask a question, Mr. Chairman? Is there a possibility that you will re-insure some of this risk?

Hon. Mr. FLEMING: I do not see how that is possible because while other companies may be authorized to insure in the form of credit insurance nobody else is in this business today, and it is not our intention to undertake re-insurance. Now, this situation may not remain static. Mr. MacGregor has indicated reasons why it is desirable that not too many people be in this field. That is a bridge that will have to be crossed when we come to it.

Senator CROLL: Mr. Fleming, I do not often get a chance of having you on the other side, you know. Can you give us some idea of the geographical area you intend to operate in?

Hon. Mr. FLEMING: All of Canada.

Senator CROLL: You gave us a few of the conventional lenders. Has this been discussed with C.M.H.C., and if so, what is their view?

Hon. Mr. FLEMING: Yes, sir, they have been kept in touch with our plans, as has the Department of Finance, and other organizations.

Senator CROLL: I realize that, but you told us that the conventional interests were in agreement with what you were doing, and were going along with it. That is what I understood you to say.

Hon. Mr. FLEMING: Yes, I said we had had extensive discussions with them. We would not have gotten this far had we not had indications that they would go along with it and participate in this form of lending.

Senator CROLL: You have had discussions with C.M.H.C. What has been their view?

Hon. Mr. FLEMING: I do not think that C.M.H.C. has indicated any precise view. They have been made aware of what our intentions are, and they have taken note of all the information that was put before them.

Senator CROLL: I have not looked at the Bank Act recently, but as I recall it it provides that so long as the bank does not hold a dominant position it has the right to go into—

The CHAIRMAN: It can go in as an investor, as long as it is not carrying on the business.

Senator CROLL: What is it, a majority position? What is the limitation?

Hon. Mr. FLEMING: Mr. Chairman, there is no problem, I am informed, in that regard. As I indicated, the interest of the Bank of Nova Scotia is one-third, and while the three together will continue to hold a majority of the issued shares of the company this would mean in the ordinary course that the bank's interest would be of itself a minority interest. This is not a situation where the bank by attempting to get control for itself would be violating the terms of the Bank Act.

Senator ISNOR: You said one-third, but you mean one-third of the 51 per cent?

Hon. Mr. FLEMING: Yes, sir.

Senator ISNOR: I have two simple questions, Mr. Chairman. Mr. Fleming, did you say it would be restricted to investments of not over $35,000?

Hon. Mr. FLEMING: This, I said, is the maximum amount of any mortgage that will be insured on a single family residence.

Senator ISNOR: And the other question is with respect to the word "risk" used by both Mr. MacGregor and yourself. Is there any restriction in the Companies Act or the Bank Act concerning investment of a risk nature?

Hon. Mr. FLEMING: No, we do not come under the Companies Act here, Mr. Chairman, we are under the Canadian and British Insurance Companies Act.

Senator ISNOR: Is there any restriction with regard to investment of a risk nature there?

Hon. Mr. FLEMING: Of course, there are restrictions imposed on all insurance companies. Here we are not dealing with the investment that may be made by an insurance company. This is a mortgage insurance company. We are dealing with the kind of business it may do. Now, this mortgage insurance company must accumulate certain reserves. It has got to set aside a portion of its premiums—the unearned portion of its premiums. It has to set aside policy reserves as well, and it will have to invest those. But, in that respect it will be subject to the limitations imposed by our own general insurance legislation on all insurance companies.

Senator ISNOR: I am just using the word that both you and Mr. MacGregor used. It is still a risk.

Hon. Mr. FLEMING: Well, that is applied, Mr. Chairman, to the business that the company is doing. It is not applied to the company's investment of any of its surplus.

The CHAIRMAN: There is a risk you are proposing to insure against.

Hon. Mr. FLEMING: Yes, we would not be in the business if there were not a risk here. I say the fact there is a known risk here is the whole basis of our application.

The CHAIRMAN: Any other questions? Are you ready for the question? Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

Hon. Mr. FLEMING: Thank you, Mr. Chairman.

The committee thereupon concluded its consideration of the bill.

First Session—Twenty-sixth Parliament
1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-95, intituled: "An Act to amend the Income Tax Act".

The Honourable SALTER A. HAYDEN, Chairman

No. 1

WEDNESDAY, NOVEMBER 27, 1963.
THURSDAY, NOVEMBER 28, 1963.

WITNESSES

Mr. J. S. D. Tory, Q.C., Director and General Counsel, Moore Corporation; Mr. J. C. Lockwood, President, Lever Brothers Limited; Mr. A. J. Little, Vice President, The Canadian Chamber of Commerce; Mr. K. S. C. Mulhall, Vice President, Canadian Petrofina Limited; Mr. Wilson Seale, Vice President and Secretary Treasurer, Miron Company Limited; Mr. A. E. Kress, Executive Vice President, Federation of Automobile Associations of Canada; Mr. F. R. Irwin, Director, Taxation Division, Department of Finance, and Mr. J. F. Harmer, Director, Assessments Branch, Department of National Revenue.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29824-0—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	O'Leary (*Carleton*)
Baird	Hayden	Paterson
Beaubien (*Bedford*)	Horner	Pearson
Beaubien (*Provencher*)	Howard	Pouliot
Bouffard	Hugessen	Power
*Brooks	Irvine	Reid
Burchill	Isnor	Robertson (*Shelburne*)
Campbell	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Connolly (*Ottawa West*)	Leonard	Taylor (*Norfolk*)
Crerar	*Macdonald (*Brantford*)	Thorvaldson
Croll	McCutcheon	Turgeon
Davies	McKeen	Vaillancourt
Dessureault	McLean	Vien
Farris	Molson	Willis
Gershaw	Monette	Woodrow—46.

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 26th, 1963.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Crerar, P.C., for second reading of the Bill C-95, intituled: "An Act to amend the Income Tax Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Crerar, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

29824-0—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 27, 1963.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 12 noon.

Present: The Honourable Senators:—Hayden, *Chairman;* Beaubien (*Bedford*), Bouffard, Burchill, Campbell, Connolly (*Ottawa West*), Crerar, Croll, Davies, Dessureault, Gouin, Horner, Hugessen, Irvine, Isnor, Kinley, Lambert, Macdonald (*Brantford*), McCutcheon, McLean, Pearson, Pouliot, Power, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Vien, Willis and Woodrow.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and The Official Reporters of the Senate.

On Motion duly put it was Resolved to Report recommending that authority be granted for the printing of 1,000 copies in English and 300 copies in French of the Committees proceedings on Bill C-95, intituled: "An Act to amend the Income Tax Act".

The following witness was heard with respect to the said Bill:—Mr. J. S. D. Tory, Q.C., Director and General Counsel, Moore Corporation.

At 1.00 p.m. the Committee adjourned.

At 2.15 p.m. the Committee resumed.

Present: The Honourable Senators:—Hayden, *Chairman,* Beaubien (*Bedford*), Bouffard, Burchill, Campbell, Connolly (*Ottawa West*), Crerar, Croll, Davies, Dessureault, Gouin, Hugessen, Irvine, Isnor, Kinley, Lambert, Macdonald (*Brantford*), McCutcheon, Pearson, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson and Woodrow.

The following witnesses were heard with respect to the said Bill:—Mr. J. S. D. Tory of Moore Corporation; Mr. J. C. Lockwood of Lever Brothers; President, The Canadian Chamber of Commerce.

At 3.15 p.m. the Committee adjourned.

At 4.55 p.m. the Committee resumed.

Present: The Honourable Senators Hayden, *Chairman;* Beaubien (*Bedford*), Bouffard, Burchill, Campbell, Connolly (*Ottawa West*), Crerar, Croll, Davies, Dessureault, Gouin, Hugessen, Irvine, Isnor, Kinley, Lambert, Macdonald (*Brantford*), McCutcheon, Pearson, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson and Woodrow.

The following witnesses were heard with respect to the said Bill:—Mr. K. S. C. Mulhall, Vice President, Canadian Petrofina Limited; Mr. Wilson Seale, Vice-President and Secretary Treasurer, Miron Company Limited, and Mr. A. E. Kress, Executive Vice-President, Federation of Automobile Associations of Canada.

At 6.00 p.m. the Committee adjourned.

THURSDAY, November 28, 1963.

At 9.30 a.m. the Committee resumed.

Present: The Honourable Senators:—Hayden, *Chairman;* Baird, Beaubien, (*Bedford*), Bouffard, Burchill, Campbell, Choquette, Connolly (*Ottawa West*), Crerar, Croll, Davies, Dessureault, Gershaw, Gouin, Hugessen, Irvine, Isnor, Kinley, Lambert, Macdonald(*Brantford*), McCutcheon, McLean, Power, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson and Woodrow.

Bill C-95, intituled: "An Act to amend the Income Tax Act", was further considered and read clause by clause.

Mr. F. R. Irwin, Director, Taxation Division, Department of Finance, and Mr. J. F. Harmer, Assistant Director, Assessments Branch, Department of National Revenue, were heard in explanation of the Bill.

Further consideration of the Bill was adjourned until Tuesday, December 3rd, 1963, at 9.30 a.m.

At 12.15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 27, 1963.

The Standing Committee on Banking and Commerce, to which was referred Bill C-95, to amend the Income Tax Act, met this day at 12.00 noon.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The CHAIRMAN: Honourable senators, we now have before us Bill C-95 for consideration, and we have some witnesses to hear. We still have an hour to go before the luncheon adjournment at 1 o'clock, so I suggest we start with the witnesses now.

Senator CROLL: In fairness, do you not think we should have a 10-minute break?

The CHAIRMAN: I think we could go through until 1 o'clock.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 1,000 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: What I was proposing was that we should first hear the witnesses before we start considering the bill section by section. Mr. Tory is here and he wishes to present some views on one or two aspects of the bill. Subject to your views, I would propose we hear him first.

Senator CROLL: If we are going to consider the bill, had not we better have the Government witnesses before we hear people in opposition?

The CHAIRMAN: Of course, I am in the hands of the committee, but my idea was that we should hear all the witnesses who have representations to make, and then we will sit down and consider the bill with the Government representatives and decide whether we approve or disapprove of the bill in the sections as they come up one by one.

Senator CROLL: We have a bill before us that should be explained by someone I do not presume to understand this bill as thoroughly as some people think I might, as others think they do; and I would like the Government witnesses to give us the necessary explanation, and then those who have something else to say about it could say what they have to say. Then perhaps we should recall our own people.

The CHAIRMAN: When these witnesses requested the opportunity to be heard someone had to make a decision as to the order in which we would like to proceed, so I assumed the responsibility and told them we would hear them first and then deal with the bill afterwards.

Senator CAMPBELL: I agree with that.

The CHAIRMAN: Is that in order?

Hon. SENATORS: Yes.

The CHAIRMAN: Mr. Tory?

Senator ISNOR: Would you give us the names of those who are opposing the bill?

The CHAIRMAN: I could give you the names of some of the people who are here and who, I understand, have representations they wish to make in respect of certain aspects of the bill. Among those to make representations are Mr. J. S. D. Tory of Moore Corporation; Mr. J. C. Lockwood of Lever Brothers; Mr. A. J. Little of the Canadian Chamber of Commerce; and I believe there is a Mr. Campo of Canadian Petrofina. There may be others, but I have not been furnished with their names yet.

Mr. Tory?

Mr. J. S. D. Tory, Q.C., Director and Counsel, Moore Corporation: Mr. Chairman and honourable senators, I thank you very much for the opportunity of being heard here today, and perhaps the essence of what I am about to say in some reasonable detail, is that theory does not always work in practice; or, perhaps, if you prefer to put it another way, a logical premise can be brought to an illogical conclusion.

I would like to direct my remarks to one particular aspect of the bill before you, and to use as an illustration one particular company. There are many companies in like plight, but I would like to mention this one particular company, Moore Corporation Limited, as an illustration of the kind of thing which perhaps by inadvertence, to be charitable, has resulted or may result from the enactment of some of the withholding tax provisions of this bill. With me are Mr. W. H. Browne, the president of the corporation, and Mr. E. N. Vanstone, its vice-president and treasurer, if there are any questions you would like to ask which I am unable to answer.

This particular company, along with numerous others in like plight, although varying in circumstances and degree, does show how a Canadian company owned and controlled in this country and complying in every respect with the objectives, as I understand them, of this legislation, may find itself, and probably will find itself, so penalized thereby as to be forced to consider forms of internal or perhaps geographic re-establishment of its affairs, all of which will be just exactly the opposite of what this bill purports or seeks to accomplish.

First of all, if I may, I would like to give you a little background against which to consider the probable—it may be indirect—effect of the withholding tax provisions of this bill on this type of Canadian controlled company. In doing so I would like you to keep in mind I have no authority to name them, but lots and lots of them exist.

This particular company was established years ago. It has been a great success, and not only is it the largest company in its field in Canada but it is the largest in the United States. Further it has been made the largest in the world, and all this without any subsidized research, or other incentives or inducements over the course of the years.

I would like you to keep not only this in mind, where the problem is measured in terms of millions of dollars, but also the position of the young people of this generation who want to seek to emulate this kind of success abroad and may run into troubles that the success of this corporation may have brought upon itself.

Some 80 years ago a man called S. J. Moore conceived the very simple idea of putting carbon paper in sales and order books, the kind of things you wrote out your order on in a grocery store, and the idea, of course, caught on as a method of keeping records. There is now a very advanced system of business forms used all over the world, but this was the simple genesis of this whole thing. As the idea caught on he decided to penetrate, as we are all exhorted

to do today, the U.S. market. There is a tariff and you cannot hop that and compete, so you start a business in the United States and adopt the ordinary business form of having subsidiary companies to handle the portion of the business you are going to transact in different countries.

From these small beginnings Moore developed not only a new product but also a whole new industry. To understand the problems you must realize, as you do, that the form of organization resulting from growth, economic circumstances, acquisitions, from the fact there is a tariff barrier, is that you have subsidiaries abroad. Moore, which is incorporated in Canada, is a holding and management company. It carries on its Canadian business through two Canadian wholly-owned subsidiary companies. It carries on its United States business through several wholly-owned subsidiary companies; it has seven plants in Canada, 24 in the United States and one in Mexico. Its sales last year were of the order of $178 million, and they are on the way to being $190 million this year. That gives you an idea of the rate of growth.

Sixty-five per cent of the shares of this company are now, according to the latest figures I have, owned in Canada by Canadian residents. Thirty-three per cent are owned in the United States, and two per cent are owned elsewhere. With that degree of Canadian ownership, of course, this is one of the companies that under the bill has the tax on its non-resident shareholders reduced from 15 per cent to 10 per cent, so it is one that complies with that aspect or theory of this bill. But that has nothing to do with what I am going to say because that is a tax on non-resident individuals and does not affect the company itself.

As I have said all of these subsidiaries whether in Canada or in the United States are wholly-owned, that is at least until such time as Moore may be forced by other nationalist policies in other countries to give up an interest in these wholly-owned companies abroad. That is the reverse side of the coin we all have to consider. The company has no bonds, debt or other debentures. Now in order to pay those dividends which amount to about $7 million a year Moore, being a holding and management company, must get the funds from somewhere, and the only place it has to obtain those funds is from its operating subsidiaries, after they have paid their taxes on the income they earn, wherever the operation happens to be carried on. Between 85 and 90 per cent of the sales and profits of Moore Corporation are earned in the United States. It is obvious that a large part of that $7 million, which is the current rate of dividend, and which has a history of steady increase amounting approximately to 85 per cent, must come from where it is earned, and that is the United States. The inflow of funds to this country favourably affecting Canada's balance of payments position has averaged over the last five years about $5 million a year based on current operations and increased dividends. The total is of the order of $6 million annually. The balance of this comes from the earnings, after tax, of the Canadian subsidiaries. This is all good.

The second point is that not only are we owned in Canada but our life's history has been one of bringing United States dollars back to this country and in underlying that may I say that during the past 35 years not one Canadian dollar has stayed abroad or been sent abroad to earn this money. It has all been generated by the foreign business itself.

What is Moore Corporation's current Canadian position before the enactment of this bill? Dividends received by Moore from its Canadian subsidiaries, after they have paid Canadian tax are received by Moore without payment of further Canadian tax. That is one source of its funds—dividends received from its United States subsidiaries after they have paid their United States tax on the operating income and received by Moore in Canada without further Canadian tax. However, and this is the crux of the matter, when dividends are brought across the border there is a United States withholding tax which prior

to the budget brought down in December, 1960 was 5 per cent, and which as a result of that measure in 1960 became 15 per cent. This was by virtue of the reciprocal tax convention. I don't want to present or argue about figures; we have them and we have charts and statistics, but we want to talk about the principle. Doing business in its present corporate form through the medium of subsidiaries incorporated in the countries where the operations take place and the sales are made, which is the usual method of doing business abroad, Moore's wholly-owned subsidiaries and thus, indirectly, Moore's shareholders, bear the burden of triple taxation. The Canadians, the 65 per cent who own the company, have three sets of taxes. First, indirectly they bear the result of the taxes paid by subsidiaries where the operations take place. Secondly they have a double tax which we all have as individuals when Moore Corporation pass out dividends to them. Now, of course, Canada recognizes that double taxation is bad and the standard 20 per cent dividend tax credit we all receive in this country and the reciprocal tax convention between Canada and the United States itself tries to avoid in every possible way double taxation of the same income. But as a result of the United States withholding tax, when that money comes back across the border from the United States to Canada, at whatever rate it is, whether it is at 5 per cent, as it used to be, or 15 per cent as it was after December, 1960, or some other rate which we are apprehensive about, and which I will deal with in a minute, they are subjected to a further burden of triple taxation—this withholding tax. At 5 per cent it was just bearable, but 15 per cent became really serious and representations were made to the proper authorities here in Ottawa to obtain some relief from the effect of this increase but to no avail.

Now our concern is that the effect of this bill is, and you, Mr. Chairman, and other honourable senators are perfectly well aware of this, because I have had the opportunity of reading your Debates, except for yesterday's, on this bill, that there is a proposal that some people, not us because we comply—we have the necessary degree of Canadian ownership—but some other people may have a 20 per cent tax imposed on them as an economic weapon to force them to do this or that. The effect of that, we feel, is that there will be an automatic breach of the treaty, and if that is the case, and this point has been assumed all through the debates, the United States withholding tax which is our triple tax will become automatically 30 per cent. That is their normal rate of withholding tax in the absence of a limiting treaty or convention, and if we break the treaty they are then on their own regular tax. And then our friends to the south do not have to say anything or do anything by way of retaliation to bring all this about. They can simply sit there and say "Don't blame us; we didn't do anything; you pulled the trigger and shot your own child."

So triple taxation to this extent is financially and economically unbearable, and, speaking as director and counsel for the company, would require us to take some steps in the interests of our own Canadian shareholders, and all our shareholders, for that matter, because this burden would simply be too great for us to bear. So I may as well say it. This corporation that for 80 years has grown from the inception of one man with a simple but expanding idea, and which has extended to markets abroad, has become the largest organization in the world of its kind. It may and probably will be forced to leave this country.

Now to the extent that that sort of thing happens or may happen to a blue chip Canadian investment like Moore, what sort of an inducement is that for the Canadian citizen to invest in a company which is apt to be so penalized, and what sort of incentive for young men to go abroad, leap tariff barriers, establish businesses abroad, bringing ultimate profits back home to Canada, if he is going to be faced with the same sort of thing? That is why I venture to bring one company and its affairs before you because I think it epitomizes the whole situation.

I realize, Mr. Chairman and honourable members of this committee, that it is a pretty late stage in the progress of this bill to raise again the storm signal, but sooner or later Canadian investors at large will become thoroughly aware of what can or will happen to Moore and to others in like plight, and we feel we cannot let this approaching tidal wave roll over us without going on record with these facts and calling for your wise consideration of the problem.

Public attention has been called again and again to the imposition of unwise punitive incentives instead of incentives with positive constructive inducement to encourage Canadians themselves to finance the development of their own country, but that is not the burden of my present remarks. I am limiting them, with your permission, to this one point and one illustration.

The CHAIRMAN: Could I interject, Mr. Tory? What you are saying is that with respect to the amount of dividends you would bring to Canada from the United States operations, since they would be payable to a nonresident of the United States, as and when the convention is breached, there would be a 30 per cent withholding tax on that amount?

Mr. TORY: Yes. I put it a little differently, sir, that as we bring the money back to Moore, moneys out of which Moore in turn will pay dividends to all its shareholders wherever they may be, if you breach the treaty we fear the ultimate breaching of the treaty will bring into play what was always there, the 30 per cent United States withholding tax on moneys moving to Canada from the United States.

The CHAIRMAN: I was just trying to do a little arithmetic. I was working out 65 per cent of $7 million and determining the impact of 30 per cent on the 65 per cent of $7 million—that is an awful lot of money.

Mr. TORY: Mr. Chairman, I can give you statistics and reduce them to percentages but all I need to say is that this triple taxation is becoming unbearable. We cannot stand it and we are going to do something about it.

Senator BOUFFARD: Would this affect your American shareholders as well as Canadian shareholders?

Mr. TORY: The American shareholders will probably get a fourth tax when it goes back to them again. As a corporation receiving dividends from our Canadian subsidiaries on which they already pay taxes, and because they are receiving dividends from the United States, which Canada does not tax because they have already been taxed over there, they have no tax against which to set a further triple imposition.

Senator BOUFFARD: On all the money that comes from the United States?

Mr. TORY: Yes.

Senator BOUFFARD: And that would be a burden on the Canadian shareholders?

Mr. TORY: I say they bear indirectly because the whole bundle on which they have an interest is that which is left in it after that much more has been taken out.

Senator THORVALDSON: You mentioned a while ago the amount of dividends that came over to Canada now at the rate of about $6 million a year.

Mr. TORY: Yes, if you take a specific year but one year may vary from another.

Senator THORVALDSON: I was doing some arithmetic on this and I notice your withholding tax payable on that now would be $900,000, and if that withholding tax were increased to 30 per cent the cost would be $1,800,000.

Mr. TORY: That is right. And that is why, Senator Thorvaldson, we take the position that acting in the interests of our shareholders we have to do something about it.

Senator KINLEY: What kind of currency do you use to pay your dividends?

Mr. TORY: We pay our dividends in U.S. dollars, the kind of dollars we earn.

Senator KINLEY: Do you use United States dollars to pay dividends to Canadian residents?

Mr. TORY: Yes, Canadians get U.S. dollars as well. We earn the bulk of our money in the United States dollars so we pay our dividends in United States dollars whether to residents of Canada or residents of the United States.

Now, Mr. Chairman, I will finish very shortly. I have stressed the fact that we tried and I think succeeded in carrying out the objectives this bill seeks to achieve. We are Canadian-owned, we bring money back to this country, in fact everything that has been mentioned in support of this bill we have attained. But we are faced with the penalty that I have mentioned. We have made lots of representations about this but we have been put off one way or another. We followed all the debates and the progress of these bills, and while we have tried to attain these objectives without Government assistance, inducements or threat of penalty, we have had to rely only on the simple motives of what we understand to be our industrial system, the inducement of prospective profit and prospective growth of capital in a climate of free enterprise. That is all we have had to go on and we people in 80 years have grown from small beginnings to the present large corporation that we are.

Now, what answers have we had to the various appeals that have been made?

First, we are told that in an effort to do in a broad public way what is good for Canada, and which admittedly has been done by Moore over the years in its private way, some unfortunate people, including Moore and those in similar circumstances, are bound to get hurt, and we are told it is just too bad but that it is just one of those things.

Secondly, we are told that the 20 per cent Canadian withholding tax which may trigger the disaster we described won't be effective until January 1, 1965, by which time two things may have happened. The tax convention with the United States may be renegotiated to get us out of this admitted mess, failing which our plight may be recognized by further amending legislation. We are not told how it would be done but there is a possibility always that might be done.

Thirdly, and finally, if we press hard enough we are really in effect told, "Don't holler until you are hurt." Well, Mr. Chairman and honourable senators, we whimpered at 5 per cent, we cried at 15 per cent and why shouldn't we holler at the prospect of 30 per cent?

The CHAIRMAN: Especially when it is all going to a foreign treasury.

Mr. TORY: Thank you, Mr. Chairman. Now, it may be earlier than that. I agree with what Senator McCutcheon has pointed out that it may be the policies of this bill, notwithstanding the imposition of this 20 per cent tax, it may be a year, a month and two days from now that the mere imposition of it today may trigger this result without waiting for the effect of the imposition of the tax itself. Do I understand you correctly, Senator McCutcheon?

Senator MCCUTCHEON: I think that is arguable on the terms of the convention.

The CHAIRMAN: I think the principle of law is that a bill becomes effective as to its terms when it receives royal assent but I should say unless there is some provision in the bill which provides for a different coming into effect date. There may be a provision in the bill that after royal assent it does not come into force because it comes into force only when it is proclaimed. In this bill you have a provision proposing an effective date in 1965. Therefore,

so far as that section of the bill is concerned, it is imposing a tax in 1965 and does not come into force until then. If you look at the language of the treaty, you will see the language does not use the word "impose".

Senator CROLL: "Impose"—that was the point that I thought you had overlooked.

The CHAIRMAN: No, I have not.

Senator CROLL: The imposition of the tax is not the passing of the bill, but the collecting.

The CHAIRMAN: The paraphrasing I used was in place of saying "imposing" —it was "when it becomes effective:" and I think it becomes effective—

Senator CROLL: When it is collected.

The CHAIRMAN: —when it is collectible.

Senator MCCUTCHEON: I had the impression it was arguable and I still think it is arguable.

Mr. TORY: I go further than that along the lines with Senator McCutcheon. I did not intend to say this, and I did not intend to go into this now. There was an act in 1943 which approved the first convention; and section 3 of that act says that:

> In the event of any inconsistency between the provisions of this act or of the said convention and protocol and the operation of any other law, the provisions of this act and of that convention—

That is the 15 per cent—

> and the protocol shall to the extent of such inconsistency prevail.

Senator BOUFFARD: That would be imposing a critical tax even before then.

Mr. TORY: I am on another point now, Senator Bouffard. It may be that they have not enacted the 20 per cent tax, but it may be that that is against my interest. But there is going to be a lot of fun on this before we get through, I imagine.

Pursuing that on a strictly legal basis, when the 5 per cent in 1961 was changed to 15 per cent, the bill included a section which amended this Treaty Act. You see, we have got both an Income Tax Act and a Treaty Act. The Treaty Act says it will prevail over anything else.

When the 5 per cent became 15 per cent, there was a specific provision which amended the Treaty Act. But nothing like that was done this time. However, that is another question.

Senator BOUFFARD: May it happen that this 30 per cent may be imposed by the United States as soon as the Canadian act comes into force, even before it is effective, because it is a violation of the treaty?

Mr. TORY: I think that is so and it is on that principle, assuming immediate effect, or at least assuming the 30 per cent becomes effective on one day or the other—it does not matter to us really—it brings the problem just that much closer. If you are correct and if Senator McCutcheon is correct, it becomes effective a month from now instead of a year and a month from now, but it is the same 30 per cent that we are hollering about.

Senator CAMPBELL: Mr. Tory, is there not one thing we should be very much concerned with here, that is, that no matter what the interpretation may be, and no matter which act shall govern, as the act or the treaty, that we are left in a complete state of confusion as the legislation is now drafted, so that no one can tell what the position is going to be during the current year or in the subsequent year after the act becomes effective.

Mr. TORY: In answer to that, may I refer specifically to my notes, the next paragraph of which would have read as follows:

> How do you think it feels for Moore Corporation, its Canadian management and its Canadian shareholders, to live in that kind of "never-never land" of uncertainty, confusion and prospective pain.

Various complicated suggestions have been made for foreign tax credits and they have been discarded as either wrong in principle, or inadequate in relief, or both.

In searching for something simple that, so far as I am aware, unless it arose in yesterday's Debates, Mr. Chairman, has not been advanced as yet, perhaps there is some merit in these two ideas—and then I am through.

First, if there be real merit in a Canadian withholding tax differential to accomplish economic objectives, then reduce the 20 per cent tax as proposed and leave it at the present 15 per cent rate and reduce the proposed 10 per cent to 5 per cent. That would save the principle of the measure, would not breach the tax convention, with the probable penalties and consequences that I have tried to portray; and, if I understand the constitutional principle aright, is something that is possible at this stage.

The second idea is that if this suggestion be not acceptable, then amend the bill, so that the increased 20 per cent withholding tax provision shall be effective only on the effective date of a renegotiated Canadian-United States reciprocal tax convention providing an appropriate international relief for the situation I have described.

I have read the Debates which said "we will talk ourselves out of this by January 1965 and in fact there could be no objection to an amendment which merely becomes effective—"

The CHAIRMAN: You must be referring to the Debates of the House of Commons. No such view was expressed in this Senate.

Mr. TORY: I beg your pardon, if I have caused any misunderstanding.

Senator MCCUTCHEON: You are not as optimistic about the United States Senate as some people are.

Mr. TORY: I think, senator, your success could be said to be attributed to the fact that you have thought up all the bridges you might have to cross in the future. This is a very big one and I think it would be safer to make certain assumptions. One is that it might be possible, in the light of past experience, to negotiate such a treaty within the period of the next year within whatever climate might exist from time to time. So we are told it can be done, so I could say as much. If there is any objection to my saying so, then perhaps there may be some doubt as to whether it can be done.

The CHAIRMAN: Past history would suggest that perhaps one year is too little time to negotiate a treaty or renegotiate one.

Mr. TORY: I have tried to be constructive. Those are the two ideas for consideration and I do thank you most sincerely for allowing me to be heard and for putting me on at such an early stage.

The CHAIRMAN: Are there any questions to Mr. Tory?

Senator CRERAR: I have one question, as I wish to clarify my own thought. Your subsidiaries in the United States pay substantially more than your subsidiaries in Canada?

Mr. TORY: Oh, yes, because you see 85 per cent of our sales and profit are made in the United States.

Senator CRERAR: What is the amount of the dividend transferred to Canada from American subsidiaries?

Mr. TORY: It has varied over the past five years, and averaged $5 million a year.

Senator CRERAR: Assuming it is $5 million a year and at the present time or in the past since 1960, there has been a deduction of 15 per cent from the United States?

Mr. TORY: A deduction has been applied.

Senator CRERAR: What happens in that case there?

Mr. TORY: We have kept dividends down as low as we can and used our Canadian to the extent available.

Senator CRERAR: Why not tax the amount available at the 15 per cent rate?

Mr. TORY: It was subject to 15 per cent cent.

Senator CRERAR: Subject to 15 per cent tax. What you fear now is—I think your fears are fully justified—that that will be increased to 30 per cent.

Mr. TORY: Yes, senator.

Senator CRERAR: That is doubling it. If you had, say transmitted $100,000 to Canada and a $15,000 tax was imposed in the United States, under that position now you would expect to pay a tax of $30,000?

Mr. TORY: That is so.

Senator CRERAR: And consequently as a result of that, if that is to be a permanent condition it would in your judgment be appropriate to end the business of the corporation in the United States.

Mr. TORY: I am afraid so.

The CHAIRMAN: I think the suggestion was that that kind of surcharge you might have would give consideration to ways in which you did not have to bring that money home, even if that involved moving your operations or your holding company out of Canada.

Senator THORVALDSON: We can probably get this information from other witnesses later on. But do you know approximately how much money comes into Canada in a year in the form of dividends from subsidiary companies of this kind?

Mr. TORY: Do you mean all told?

Senator THORVALDSON: All told.

Mr. TORY: No; but I believe that studies have been made, and I am just reading between the lines, that in the negotiations that are going to take place within the next year the amount of withholding tax on dividends coming north this way will be matched against the amount of withholding tax, even with our increased rate of dividends, moving south, and possibly, too, will be adjusted; but I am a little suspicious of these types of statistics.

The CHAIRMAN: I saw some figures recently which suggested that the inflow of dividends to Canada was of the order of perhaps $110 million, and the outflow of dividends from Canada perhaps of the order of $350 million or $450 million a year. This was an attempt to take out the interest element and just determine a dividend.

Senator CAMPBELL: I should like to ask a question, Mr. Tory. At one stage I understood that you were developing an argument to show to the committee that the whole principle of withholding tax between our two countries is beginning to work very much to the detriment of Canadian companies attempting to do business in the United States. There are many, many of them. I believe the figures which I have seen indicate that right now up to $2 billion is invested by Canadian companies in the United States through subsidiaries there, wholly-owned subsidiaries. I gathered from your arguments that 15 per cent has reached a point where it will most likely discourage this type of operation.

Mr. TORY: That is quite so Senator Campbell; and I have simply taken the illustration of one company because it is one of the simplest, clearest cut

cases of what can happen; and I think it is more realistic to relate it to a specific company operated by living people, Canadians right here in this room, than to talk about a lot of charts and statistics and so on, of an indefinite company.

Senator CROLL: The figures the chairman gave you a few minutes ago of $110 million coming in and $400 million odd going out may not be far out, I do not know. In the light of that, do you not think the Government has a real problem that continues on year after year, and do you not think they have need to do something about it?

Mr. TORY: I am not quarrelling, Senator Croll, with the principles. I think I started out by saying something to the effect that the essence of what I was about to say was that theory did not always work out in practice, or that a logical premise could be driven to an illogical conclusion; and that is one of the answers we have had in Ottawa—"Well, it is too bad about you". But you are asking whether I support the whole principle of doing something about this, not by specific legislation, but certainly as a Canadian I am perfectly conscious of the problem and I am aware of it, and I applaud any genuine effort to do something about it. I am pointing out to you what will happen in connection with people who have complied with all the objectives and principles laid down that are desirable, and then a two-handled axe is taken to cut off their head.

Senator CROLL: I appreciate that. You are not alone in that. I saw the names of six companies mentioned in the Sunday edition of the New York *Times*, as probably you did, and your company was one of those named. But the very fact this does exist, Mr. Tory, isn't that the argument the Government has been using with the United States for the purpose of renegotiating the treaty on some more reasonable basis?

Senator MCCUTCHEON: Surely, Mr. Tory does not know what arguments are involved there?

Mr. TORY: I was not there, Senator Croll; and I have suggested what I think is constructive and that we just wait and see what comes out of it. The Minister of Finance said in the house that he was advised in Washington to pass this bill, and then talk about it afterwards. That is a rather uncertain position for us. I am merely suggesting one or two ideas that we should, or you should suggest, in amendment to this bill, making the imposition of such a tax in the possible, even probable breach of the treaty coincidental with the renegotiation. Let us not do anything about it until after these things take place. I hope that is not unreasonable.

Senator THORVALDSON: May I draw to your attention that at the present time your subsidiaries in the United States are subject to the United States corporation tax, which is approximately 50 per cent?

Mr. TORY: Yes.

Senator THORVALDSON: Then with this added it puts your United States taxation up to between 65 and 70 per cent. Isn't that right?

Mr. TORY: Well, in that order. Very substantial increases.

Senator THORVALDSON: Consequently, from your whole business in the United States, Canadian shareholders only get about 30 to 35 per cent of your total profits?

Mr. TORY: And we have got to do something about that.

Senator CAMPBELL: I have one more question, Mr. Tory. I gather that what concerned Senator Croll, and concerns any person in the finance department, I suppose is the differential in inflow and outflow from the United States to Canada and from Canada to the United States. From your knowledge and experience, and it has been very broad in business and finance, are you not

aware of a number of companies who have in recent years established substantial businesses in the United States who have not yet been able to draw dividends back because the moneys are required there, and that this type of legislation will have a very serious effect upon that, similar to the Moore Corporation, in the final analysis?

Mr. TORY: I would rather not mention names of other companies; but I can give you the name of another company, of which I am a director and general counsel, which developed a product through Canadian research, and which was I believe the best accepted product of its kind in Canada. The company built a factory in Canada to produce that product, which it sold from coast to coast until it saturated the Canadian market. There was no one else to go to abroad. There was a tariff in the United States against which it could not compete with the American producers. So it built a $25 million plant across the border in the United States. That was about six years ago. Since then it has increased by 50 per cent, and it will probably increase further. The product is accepted in the United States as the best. This will go on. It will have the same problem. Right now it is using all the moneys generated in the United States to expand the business in the United States, and it has enough Canadian income, indeed, plenty of Canadian income as well as income from sources other than U.S., to pay its own dividends. So it has not the problem today, but in principle it has the same problem—it is just a little further off.

Senator MCCUTCHEON: Probably I know the company of which you are speaking, but it might well be in that case that the American end of the business is the small end. Is it not possible that the company could deliberately refrain from bringing dividends into Canada and using that money for further expansion in the United States, with no benefits to Canadians at all?

Mr. TORY: I think both you and I know that there are very few Canadian subsidiaries with, let us say, U.S. parents who are going to pay any 20 per cent if they don't have to. They are going to use that money to buy some more of Canada. That is how these incentives are working. In my office I am faced with that all the time. The theory does not work in practice. That is my first point. It is just producing the opposite results.

Senator CROLL: You say "Buy more of Canada". Just what do you mean by that?

Mr. TORY: Well, that is just an expression. I should have said, quote and unquote.

Senator CROLL: Exactly what did you mean?

Mr. TORY: Instead of sending the money back to the United States in the form of dividends, invest it in Canada in the purchase of other Canadian businesses. "Buy more of Canada"—unquote.

Senator MCCUTCHEON: Mr. Tory, while you said you agree with the objectives or the over-all desire to do something about this problem, it is still part of the balance of payments problem?

Mr. TORY: Sure.

Senator MCCUTCHEON: I just wanted to clarify the answer you gave Senator Croll. I take it that you are not suggesting that the proper way to do it is by discriminatory taxation against the companies doing business in Canada.

Mr. TORY: I am 100 per cent against that.

Senator MCCUTCHEON: I just wanted to make it clear.

Mr. TORY: I am sorry that there was even any doubt about it.

The CHAIRMAN: Just before we adjourn, gentlemen, I wonder if Mr. Browne wishes to say anything.

Mr. TORY: Mr. Browne, the president of Moore Corporation Limited is here, I think, only to answer questions which I, as a poor lawyer, could not answer.

The CHAIRMAN: That is in quotes too, I take it.

This room will not be available this afternoon, but room 356 will. I suggest that we meet there at 2.15.

—Luncheon adjournment.

(*Later*)

Upon resuming at 2:15 p.m.

The CHAIRMAN: I suggest that the next witness we hear be Mr. Lockwood, who is the president of Lever Brothers.

Mr. J. C. Lockwood, President, Lever Brothers: Mr. Chairman and honourable senators, first of all, I want to thank you for giving me this opportunity of expressing some views with particular reference, perhaps, to the withholding tax clause in the Income Tax bill. Before I get into that I would like to explain something about the company which I have the honour to represent.

My company, Lever Brothers, as you perhaps know, was founded in this country in 1898 by the first Lord Leverhulme, and it has been operating on the same site for the last 66 years. Today it forms a very important part of the detergent, dentifrice and margarine industry of this country.

We have operated reasonably successfully over that long period of time, and I think we have been in a position to benefit the industry considerably by the worldwide know-how, the worldwide research, and the finance which has been available to my company in Canada over these last 66 years.

Furthermore, of course, we have been able to train many hundreds of Canadians in the sophisticated management practices of today, and we continue to do so.

With that little background about the company I would like to express some views on the problem which is liable to face a wholly-owned subsidiary of a worldwide trading organization. Unilever, as you probably know, is the largest trading organization in the world; it operates in 50 countries in the free world. It has been responsible for the development of the detergent and margarine industries around the world, and has played a major role in this industry in Canada.

Canada has been in the past a particularly favourable area for a worldwide operation such as ours. It has had a remarkable reputation for the fairest possible treatment of foreign capital and it has always been one of the jewels of Unilever's worldwide operation for that very reason. I think that likewise holds good for many other international operations.

It was therefore with particular shock and distress that we learned of the proposed legislation on withholding tax. We felt that this particular development was likely to damage the reputation of Canada as an area for investment; that the legislation itself was perhaps unsound in some aspects, unfair in others, and unlikely to produce the very results which it was expected to produce.

Let me explain a little further. We felt it was unsound because it will put a restriction on the profitability of a company like my own which has been operating for more than half a century here without any warning or preconditioning. The normal approach to the control of foreign investment in most countries around the world is to lay down certain conditions under which the foreign investor can choose to operate or not as he sees fit. None of those conditions, of course, operated in this country some 66 years ago when Lever entered the field here. Therefore the legislation is, in effect,

retroactive, and if I might use an old English phrase, it does not seem quite like cricket, if no opportunity is given to an organization like ours to decide whether or not to enter Canada for our operation. We are already here. We have already made heavy investments and continue to make heavy investments in this country. We are now suddenly faced with what is in fact a retroactive form of legislation.

It is true that in many countries around the world there are conditions which govern the entry of foreign capital; in fact in all countries in which we operate, some 50 in total, there are varying degrees of control of foreign investment. But these controls are laid down in advance and the investor has the right and privilege to decide whether or not to operate in that particular area.

From the research I have made through our own headquarters operation in London, and through research that was carried out in the States and reported on in the *Globe and Mail* it looks as though Canada will be in the unenviable and unique position of being the only country in the free world which will legislate or discriminate against foreign capital by taxation. This we believe is most unfortunate and cannot but have a very adverse effect on international and foreign organizations which would hope to come into this market in order to develop certain areas of it which have not as yet been devcloped, or in which there is not perhaps the available Canadian capital, know-how and management technique to do so.

So, we feel, as I say, that the legislation is unfair in that respect. We think too that in its very nature it is somewhat unsound because it will of course produce two classes of taxpayers in the same field. You will have the domestic business paying one tax and the foreign business operating in the same field paying a different tax. Now I don't happen to be an expert on the principles or theories of taxation, but I think it is fairly generally accepted that this kind of discrimination in the same class of taxpayer is an unsound element to introduce, and one can imagine, if it is carried forward, all sorts of different and undesirable consequences which would result if the principle were to be pushed too far.

I think we feel too that the proposed withholding tax cannot produce the results which it is hoped to produce.

As we all know there is a very high percentage of foreign ownership of many industries in this country, in my own industry particularly. We believe on the other hand that it is due to the international operations of our businesses that the standards of manufacturing in Canadian industry, with the products which the Canadian consumer is able to enjoy, result largely from the know-how and the research which is only available through enormous organizations. In other words, it would not be possible for a small company to expend the millions of dollars that are required each year to maintain the standard of quality, to produce the new products and to give the Canadian consumer the best possible results except through means of an organization such as the one I belong to.

If this kind of legislation goes into effect the international trader must start to wonder whether he should continue to pour into the country the resources of his research organization, of his management and of his money. It must give him great cause to pause when he thinks where he is next going to devote his efforts. I think this is one way in which this type of legislation is going to have an adverse effect on the future development of industry in this country. Not only does it affect the parent company but it also affects the subsidiary.

As I said before, my company is a wholly-owned subsidiary of an English trading organization. I would like to push its activities ahead, I would like to see that company grow, I would like to see it enter the export field

more effectively than it does today. All these things are of immense benefit to Canada and to the people who work for this organization, but with this kind of prospective withholding tax one again has to pause and say, "Is it right to put this kind of effort in, when the profitability of the business is inevitably going to be affected?"

I don't want you to feel that I am not sympathetic with the intentions of the Government. I have lived in Canada since 1946 and its interests are as close to my heart as to anybody's, and I think this rings true for many foreign subsidiaries in this country.

We believe that the country eventually should own a much higher percentage of its industry. We believe firmly too that as Canada grows in wealth, stature and population that it is the normal course of history for this very thing to take place. One has only to look back on the early history of the United States and other countries around the world to see that natural evolution which will take place, but what will happen if we put artificial brakes on the development of this great country, brakes which can have a serious effect, because it is only the very large international companies which can afford to take the long view. Let me give you an example.

Suppose there is some entirely new development in the detergent industry which is going to take nine or ten years of intensive technical research to produce and will then require a great deal of capital with which to produce the product. My company operating alone as a Canadian-owned company would find it very difficult to do that. In the first place my Canadian shareholders would expect dividends, quite reasonably, but being the subsidiary of an international company it would be possible for us to forego dividends for a number of years while we invested our profits in this research operation, which would ensure and maintain the standard of industry in this country in relation to the United States or anywhere else in the world.

So we are, as I say, sympathetic but we believe that there are other methods which have been expressed in debates in Parliament and have been expressed in the press, to encourage Canadian investment in business. We cannot on the other hand believe that this proposed withholding tax is going to achieve that result. For this reason we do want to bring that point of view strongly before this committee.

The CHAIRMAN: What is your position right now, before the bill becomes law, in relation to a dividend moving from the Canadian subsidiary to the English parent?

Mr. LOCKWOOD: We pay no withholding tax under the present tax treaty with the United Kingdom.

The CHAIRMAN: That is under the Canadian-United Kingdom tax convention?

Mr. LOCKWOOD: Yes, that is right.

The CHAIRMAN: There is a provision there that the withholding tax shall not exceed 15 per cent?

Mr. LOCKWOOD: That is correct.

The CHAIRMAN: So that when this 20 per cent becomes effective, having regard to the provision in the bill which approved the convention, that the conditions in the terms of the convention override the law of the country from time to time, it may well be that for a time you will not be affected by that provision, because we will then only have a 20 per cent rate and by the convention it cannot be more than 15 per cent.

Mr. LOCKWOOD: My understanding, Mr. Chairman, is that it will be necessary to renegotiate the United Kingdom-Canada tax treaty and in that renegotiation this 20 per cent will become effective.

The CHAIRMAN: It looks to me as though, until the treaty is terminated —and termination might have to precede negotiation of a new treaty—it may end up that we have no effective withholding tax in relation to dividends paid by a Canadian company to an English company.

Mr. LOCKWOOD: Once again, Mr. Chairman, just as Mr. Tory remarked about the Moore Corporation, the ensuing months of uncertainty and doubt are going to be a very serious problem for many organizations such as my own. We have to assume, I think, that if this withholding tax becomes law the renegotiated tax treaty will take place on that basis.

Senator MCCUTCHEON: The Minister of Finance has so announced.

The CHAIRMAN: But what I am pointing out is that if you have got the convention and if there is a provision in the convention as to the procedure you must follow to terminate it, you must follow that procedure.

Senator MCCUTCHEON: That is right.

The CHAIRMAN: You may not say that this is scrapped or terminated before you give notice to terminate it.

Senator MCCUTCHEON: That is right. It can be next year, or on the 1st of January.

The CHAIRMAN: I think it is six months' notice. In the meantime there would appear to be no withholding tax between Canada and the United Kingdom and it would look as if that position might continue until they got a new treaty.

Senator MCCUTCHEON: I agree.

Senator THORVALDSON: I take it you have never paid any withholding tax?

Mr. LOCKWOOD: Not up until now.

Senator THORVALDSON: And the fact that you have not paid results from the situation that you are a wholly owned subsidiary?

Mr. LOCKWOOD: That is correct.

The CHAIRMAN: That works both ways.

Senator THORVALDSON: It may, I agree.

Senator MCCUTCHEON: Of course they pay the full Canadian corporation tax.

Mr. LOCKWOOD: Yes, and every other Canadian tax. I may add, as a matter of interest, and I am sure this applies to many other subsidiaries, over the years all the dividends that would normally have been paid to our holding company have been re-invested in this country. I think that is a fairly usual procedure with subsidiaries of larger organizations.

Senator HUGESSEN: Are you currently paying dividends to your parent?

Mr. LOCKWOOD: We are currently paying dividends to our parent corporation, which naturally is a little anxious.

Senator MCCUTCHEON: Suppose at some stage the treaty is denounced and you are faced with a new situation, the imposition of a 20 per cent withholding tax, having regard to the scope of your operations, the global operations of Unilever Limited, would it be possible, from your parent's point of view for you to cease paying dividends from the Canadian company and re-invest your retained earnings either in Canada or for that matter elsewhere, lending the money to associated companies around the world, thereby avoiding any withholding tax and accomplishing your parent's designs?

Mr. LOCKWOOD: That is undoubtedly possible, and it is something we would not like to see happen, but it will happen, I fear, if this legislation goes through.

Senator CROLL: I would like to get legal advice here. It is very useful. What makes you talk about "denouncing" the treaty? I doubt if we should assume it will be denounced by Britain.

The CHAIRMAN: I am not saying that, but what I am saying is that if you have a tax convention there is a provision in that tax convention for its termination.

Mr. LOCKWOOD: Yes.

The CHAIRMAN: But short of doing that you are stuck with the terms of the treaty, because those terms override the law, if there is any conflict in the law, and you may end up with no withholding tax applicable to England.

Senator CAMPBELL: What is the position as far as your American company is concerned; is it a subsidiary of an English company?

Mr. LOCKWOOD: It is a subsidiary of a Dutch company.

Senator CAMPBELL: Well, you have a situation here where under the provisions by which the withholding tax is applied to a Canadian subsidiary without having any Canadian content, or any Canadian content so far as the United States is concerned, that if they pay dividends they are subject to 20 percent, and that as far as the United Kingdom is concerned it would not pay any tax under the treaty.

Mr. LOCKWOOD: That is correct.

Senator CAMPBELL: And your concern is that that is not likely to stay in that position.

Mr. LOCKWOOD: That is right.

Senator CAMPBELL: And you would like it changed?

Mr. LOCKWOOD: That is correct.

Senator MACDONALD (*Brantford*): Could you tell us what the withholding tax is between your American company and the Dutch company?

Mr. LOCKWOOD: I can't tell you that offhand, senator. There is a withholding tax, but I do not know the details of that Dutch treaty. I do not think it is as high as 20 per cent.

Senator MACDONALD (*Brantford*): My information is that it is 20 per cent, but since I have not the authentic information, that is why I am asking you.

Mr. LOCKWOOD: I am afraid I have not the information either.

The CHAIRMAN: Any other questions?

Senator ISNOR: Mr. Lockwood, you said the results desired could be cured by other means and other ways. Have you something in mind to suggest?

Mr. LOCKWOOD: Not anything beyond those which have already been suggested. In broad principle I would advocate legislation which would encourage Canadian investment in Canadian enterprises. This could certainly be done without being restrictive or being discriminatory against existing organizations such as my own.

Senator CROLL: Could you be more specific in relation to this bill? You know that the minister asked for suggestions; you read that. Have you any suggestions yourself?

Mr. LOCKWOOD: That is my suggestion. There are ways and means of making investment particularly attractive to Canadian companies which are formed in the future, which certainly could easily be done.

Senator MCCUTCHEON: I do not want to know anything about your domestic economy in Canada, Mr. Lockwood, but you know something about financial markets, and so on. Do you believe it would be possible for you to distribute 25

per cent of your shares in Canada through an underwriting on a satisfactory basis, assuming you wanted to?

Mr. Lockwood: I think prior to the introduction of this legislation it might have been very easy. Our stock, I think, would have been highly acceptable. I think if every subsidiary in this country was to go on the market at the same time, it would of course be chaotic. Furthermore, I would add that, naturally, subsidiary companies like my own have considered this possibility. It does, however, seem to be a pity to draw off Canadian funds which are not all that excessive to an organization which like my own does not require that capital. It seems to us far better that the available Canadian funds should be devoted to new enterprises in this country.

Senator McCutcheon: Yes, you would take up a certain amount of the available capital on the market and ship that back?

Mr. Lockwood: Precisely—where it is needed.

The Chairman: That disturbs the balance of payments.

Mr. Lockwood: Yes.

Senator Connolly (*Ottawa West*): Assuming for the moment that the 20 per cent withholding tax became effective and your company was going to declare a dividend, and did so, you would pay the 20 per cent to Canada in this case?

Mr. Lockwood: Correct.

Senator Connolly (*Ottawa West*): What about relief from taxation on the other side going into income and—

Mr. Lockwood: This depends on the level of corporate taxation in the two countries. In this case I do not think there would be any alleviation.

Senator Connolly (*Ottawa West*): There would not be any alleviation?

Mr. Lockwood: Probably not. This situation has not arisen, so we do not know the full implications.

Senator Connolly (*Ottawa West*): No, it is hypothetical, but if it were you would not get credit for the tax that is paid here?

Mr. Lockwood: The best information that I have is that we would not.

Senator Macdonald (*Brantford*): That is quite the opposite in Canada, is it not? For any tax that you have paid abroad you get a credit for that when you make your income tax return in Canada?

Mr. Lockwood: It depends, senator, on what the levels of corporate taxation are. I think I am right in saying that the levels of taxation are about equal as between Canada and the United Kingdom, and that really there is no offsetting factor at the moment.

The Chairman: Are there any other questions? Thank you, Mr. Lockwood.

Honourable senators, we have ten minutes left. Shall we start with Mr. Little?

Senator Croll: He might take longer than that.

The Chairman: It is proposed that we resume when the Senate rises this afternoon. Mr. Little, are you concerned as to whether you divide your presentation ?

Mr. Little: I would certainly like to make my presentation now, and I think that perhaps I can make it in ten minutes.

The Chairman: Would you prefer to go ahead now?

Mr. Little: Yes, I would, because if I can finish by 3 o'clock I can catch my plane.

The CHAIRMAN: This gentleman is Mr. Little, honourable senators, and I do not think I need say more than that. Mr. Little, you are here by reason of being an officer of the Canadian Chamber of Commerce, and you are also here in your own right; is that correct?

Mr. A. J. Little, Vice-President, Canadian Chamber of Commerce: Honourable senators, officially I am here as vice-president of the Canadian Chamber of Commerce, standing in for the president, but I am delighted to be here in my own right. After reading the Chamber's letter to you I would like to say something for myself.

Senator THORVALDSON: Perhaps Mr. Little should state what other position he holds so as to make our record complete.

Mr. LITTLE: I am a professional chartered accountant, and a partner in the firm of Clarkson, Gordon and Company of Toronto.

Senator CROLL: Have you permission to be here?

Mr. LITTLE: We seek no approval from former partners in my firm, sir.

First of all, I might say on behalf of the Chamber that we appreciate very much being here. It is the wish of the executive council of the Chamber, which prepared this statement, that I should read it to you, if that is acceptable.

The CHAIRMAN: Yes.

Mr. LITTLE: I shall read it as quickly as can be, and then make one or two comments, if I may. We wish to speak about the non-resident withholding tax provisions, which are very much on the agenda today, and also on the subject of the ministerial discretion.

WITHHOLDING TAX

Two of Canada's current major problems are unemployment and balance of payments. Further, it is recognized that this country will depend for some time to come on foreign investment although increased Canadian ownership of Canadian industry is desirable.

If the proposed withholding tax changes

—are neither neutral nor helpful towards, but could tend even to increase unemployment at least in the short run;

—may have little or no effect on the balance of payment problem save perhaps to worsen it at least in the short run;

—serve to create additional barriers psychologically or otherwise to necessary foreign investment in Canada;

—and do not constitute the best or even a good method of encouraging additional Canadian participation in Canadian industry; then this legislation should not be passed and the Executive Council submits that it does fall on all the counts enumerated.

In support, the following contentions are made:

(1) Having attracted very substantial foreign capital investment into Canada over many years, it ill behooves the Government to "change the rules in the middle of the game" for existing capital investment by way of discriminatory legislation.

(2) International firms doing business in Canada will tend to hesitate before expanding their facilities in Canada for research, production for the Canadian market, production for export, etc., with consequent decreases in employment, both actual and potential.

(3) Coming on top of other unfortunate incidents in the past several years, the confidence of foreign investors in Canada will be further

shaken, so that necessary foreign investment in Canada may not be forthcoming on favourable terms.

(4) One company at least has announced plans to issue shares in Canada to comply with the proposed law and to remit most of the proceeds to its parent in the United States. Substantial sums could flow across the border in this fashion, thus increasing the balance of payment problem.

(5) In order that foreign subsidiaries may comply with Canadian participation requirements, Canadian capital must inevitably be withdrawn from the market. This Canadian capital might profitably have been invested in new equities to increase the productive capacity of the country.

(6) This discriminatory type of tax invites retaliation from countries with which Canada has income tax conventions, with adverse effect on Canadian enterprise carrying on business in the retaliating countries. This could mean a flight from Canada of parent companies which are presently Canadian.

(7) It is not at all certain that incentive to permit Canadians to participate more fully, i.e. a reduction in the withholding tax for qualifying corporations, rather than discrimination against non-qualifying corporations, i.e. by an increase in the rate, would not be just as effective from all points of view, as the proposed legislation.

In general, it is our view that to use the Income Tax Act as an instrument of economic policy in this fashion is choosing the wrong instrument and tends to create stresses and strains in unsuspected directions, thus unnecessarily interfering with the workings of the free market system.

In addition, it is our view that the problem of foreign ownership and control of enterprise in Canada has not yet been properly delineated and that before seeking to deal with the problem it is prudent to define it. It is felt, therefore, that it would be the course of wisdom:

(*a*) to await the results of the first reporting year under the Trade Union and Corporation Reporting Act which was set up specifically to develop information on the extent and depth of foreign ownership of Canadian resources; and

(*b*) to await the studies of the Royal Commission on Taxation in this connection.

That concludes the presentation on withholding tax.

Ministerial discretion:

With respect to the ministerial discretion provisions, the executive council is against ministerial discretion in principle, for the same reasons which prompted its exclusion when the Income War Tax Act was changed to the Income Tax Act in 1949.

There is no doubt about the existence of the problems. "Temporary" provisions have a tendency to become imbedded in the law if protests are not made. It is suggested that excluding ministerial discretion from the provisions in question and leaving the determination to the courts would be a suggested deterrent to deal with the control part of the problems, at least until the report of the Royal Commission on Taxation is digested.

In the alternative, if ministerial discretion must be, the suggestion is made that because proposed new section 138A leaves it open to the minister, in effect, to select a rate of tax out of several appearing in the act, depending upon his determination of the nature of the transaction, a specific rate of tax should be set in the section.

The concluding paragraph merely was our request to be allowed to appear before you.

If I may take a moment I would like to speak to this because I think it is important to the Chambers of Commerce, and also in our own case we speak on behalf of the Canadian taxpayers and Canadian industry in general. While we agree with what was said by Mr. Lockwood and Mr. Tory, we are not representing the interests of any one particular industry or company. We think we must speak for all Canadians.

I would like to deal with ministerial discretion first, because it is the shorter of the two problems. In this connection there is no doubt but that all of us have been disturbed by the tax avoidance that has been going on and has been widespread, and it has been disturbing to business and professional people. We do not particularly mind a temporary measure, provided it is not a discretionary one, until permanent and proper legislation can be enacted, though it is my own view that the present act, and section 138, for example, contain all the power that is necessary for the Government to stop the abuse that has been going on.

In our submission the suggestion is that the discretion should be removed, but if not we have made a suggestion that the rate should be prescribed. There are so many ways of fixing a wide variety of rates for Canadian corporations. If you pay the top corporate rate it would be 80 per cent. In other cases it could be 52 per cent, 30 per cent, or 16⅔ per cent. It might be zero if you move out through a U.K. parent company under present law. The problem is that if the minister must impose a tax under this section, what rate is he to use? How can he possibly decide what the rate should be? You might have 5 per cent, 16⅔ per cent, 30 per cent, and so on. We strongly urge that something in the neighbourhood of 15 per cent should be attached to the section so that some of the uncertainty will be removed. If I might go back for a moment—may I ask how many moments I have?

The CHAIRMAN: Ten minutes.

Mr. LITTLE: Then I would like to go back to the withholding tax because from our point of view this is the most important. The points that we have made in our letter fall under two sections, those that affect Canada outside, and those that affect our economy internally. The one refers to our reputation abroad, and our reputation as a stable place in which to invest. The confidence of companies outside of Canada has been shaken as well as that of those within Canada as a result of this. Those outside of Canada have lost confidence in Canada as a place to invest. If we are trying to discourage foreign capital, perhaps it serves a useful purpose. But in shaking confidence in Canada we also shake the confidence of those who wish to come in and participate with Canadians, and those who might wish to come here and lend money.

We say the effect of this provision is damaging to this country and to its image abroad. This point was made by speakers who have gone before and I would ask what do we accomplish for Canada if we direct the investment of Canadian capital into a 25 per cent participation in a presently foreign-owned company? We do two things; we encourage imports into this country because we are in effect telling our people not to buy Canadian, but to buy from abroad. Furthermore, you are directing available capital into minority participation of a company that you cannot possibly hope to control while that money simply replaces other money which might be used to invest in new corporate enterprises and productive facilities in this country. As we see it, it has the desired effect of directing our capital into a 25 per cent participation; nothing could be worse.

Secondly, from the point of view of the members of the chambers of commerce, there is a penalty which has not yet been mentioned in that the depriving

of the initial capital cost allowance is discriminatory in that it is applied to some companies and is not applied to others. As we see it, it has denied Canadian companies of an opportunity of producing equipment which other countries might have bought. As we see it, it is going to have a deterring effect on the expansion of those companies now located in Canada. It also means a slowing up in the development of our enterprises and in the solving of the unemployment problem.

Finally, the fourth point is with regard to the retaliation and what might happen between Canada and the United States. We are concerned about this, as we are concerned about its effect in regard to every other country with which Canada has a treaty. As we have seen in the past such treaties are difficult to renegotiate. There are some treaties which have been under discussion for renegotiation for two years without any results. As we see it, this is going to be difficult, and we feel that Canada will have lost some of its position in trying to renegotiate a favourable treaty. If we throw a block against another country we can expect that it will be used as a lever by that country to get terms favourable to them and unfavourable to us.

I should just like to add that I personally, as a professional accountant, concur wholeheartedly with the view which I held when the witholding tax rate was changed in 1960. The only good thing which could be said about that change was that it didn't break any treaty and did not call for renegotiation.

Senator CAMPBELL: Mr. Chairman, I wonder if Mr. Little would care to comment on the effect that this withholding tax has on the subsidiary of a Canadian company doing business in the United States.

Mr. LITTLE: This of course would apply to a minority of companies rather than the majority, but the reactions of the companies I have seen was ably demonstrated by Mr. Tory this morning. It has a very serious effect on those companies. It will, I assume, perhaps slow up the flow of dividend funds to this country, again aggravating our balance of payments problem, to the extent that there is a higher rate of tax attached. It represents a heavy burden on the Canadian shareholder.

Senator THORVALDSON: Would you like to suggest what these corporations may have to do if this becomes law?

The CHAIRMAN: This, of course, is in the area of professional advice.

Mr. LITTLE: I think Mr. Tory touched on that.

Senator THORVALDSON: Well, he was speaking of a particular company and I think he was probably more reserved than you might think you should be, covering the whole field. However, if you don't care to speak on it, very well.

Mr. LITTLE: I suppose that there will be a deterrent to bringing the dividends back to Canada. There might also be the point made a moment ago by Mr. Lockwood, that there may be a tendency for companies to lend money to companies in other countries, that is our subsidiaries might lend money say to subsidiaries in China or India rather than bring the money home, to avoid the tax. Unless we get something back from this, well, there is no flow of funds to this country.

Senator BOUFFARD: Did your chamber of commerce make representations to the Minister of Finance since this project was announced?

Mr. LITTLE: I don't think, on these two points, formal representations have been made to the Minister of Finance. We are of course going to the Carter Commission with representations which will contain these.

Senator BOUFFARD: Shall I assume that your chamber of commerce executive unanimously thinks this legislation is very bad, in so far as the withholding tax is concerned?

Mr. LITTLE: That is a fair enough assumption. I think the chamber is unanimous that this government approach will do more harm than good.

Senator MACDONALD (*Brantford*): Do I understand you to say that your brief has not as yet been presented to the Minister of Finance?

Mr. LITTLE: This has not.

Senator MACDONALD (*Brantford*): But the representations contained in it, have they been presented to the Minister of Finance?

Mr. LITTLE: Not formally.

Senator CROLL: While all this discussion was going on in the country the chamber of commerce took no steps, direct or indirect, to bring these matters to the attention of the Minister of Finance or his deputies in order to give him the benefit of the advice you are giving us now?

Mr. LITTLE: I cannot, unfortunately, being here privately, speak for the executive council. I am here pinch hitting for the president. This work ordinarily emanates from Montreal. All of these points have been made to the minister informally or unofficially in many different ways. I have not the slightest idea when every point that has been made here has been made to the minister.

Senator MACDONALD (*Brantford*): I suppose, Mr. Little, that you are in accord with Mr. Lockwood when he says he feels Canadians should own a high percentage of our industry.

Mr. LITTLE: Yes, absolutely. The chamber of course makes this point. This is a philosophy with which every Canadian of course concurs. And this is desirable in the long term. What we are saying is that we do not know that it can be accomplished quickly, and we say this is the wrong way to attempt to accomplish this end because of the adverse effects, which will be very, very bad.

Senator KINLEY: Did this legislation come before a committee of the other place?

The CHAIRMAN: Not a standing committee; it was before committee of the whole.

We will adjourn now to resume after the Senate rises this afternoon.

—On resuming at 5 p.m.

The CHAIRMAN: Gentlemen, the sitting of the committee is resumed.

The next witness is Mr. Mulhall, who is vice-president of Canadian Petrofina Limited. We are distributing copies of the statement he is going to make.

Mr. K. S. C. Mulhall, Vice-President, Canadian Petrofina Limited: Mr. Chairman, honourable senators, first of all I would like to express my appreciation for the opportunity to appear before you. It was our intention to have the president of our company here, but for personal reasons he thought it necessary to remain in Montreal, and he sends his sincere regrets.

The purpose of my visit is to ask you to consider a minor amendment to the text of Bill C-95, "An Act to amend the Income Tax Act". I refer particularly to the proposed section 139A as set forth in section 28(1) of this bill, which establishes the tests for determining whether or not a corporation has the appropriate degree of Canadian ownership and control, in respect to the circulation of withholding tax rates.

As we understand the legislation, in order to qualify as a corporation having the designated "degree of Canadian ownership and control" and thus qualifying for the lower rate of withholding tax, a corporation must meet these three tests:

(i) be a resident in Canada, and either have

(A) not less than 25 per cent of its issued shares with full voting rights under all circumstances owned by one or more individuals resident in Canada, one or more corporations controlled in Canada or a combination thereof,

or

(B) the shares of the corporation having full voting rights under all circumstances must be listed on a prescribed stock exchange in Canada and no single non-resident or related group of non-residents must own more than 75 per cent of such shares.

However, if you refer to section 9 on page 5 of the bill, a taxable corporation is defined in section 2 (*b*)(i) refers to

a corporation

any of the shares of which were listed on a prescribed stock exchange in Canada throughout the taxation year of the corporation...

However, in section 139A such a distinction is not made and the words used are "the shares of the corporation", that is all the shares, having full voting rights under all circumstances. This inconsistency in wording is discriminatory in an area which I shall describe. We do not believe that it was the Government's intention to create discriminatory legislation, but rather that the variation in wording is a minor drafting error or oversight.

There are a number of Canadian companies which have more than one class of voting stock outstanding, one class of shares being listed on a recognized stock exchange, thus enabling Canadians to participate in the ownership, while the other class may be held by a parent company. Consequently, while such companies could meet the 75 per cent distribution test dealt with in the bill, and could presumably meet the requirements for the appropriate number of directors and officers, this in itself accomplishes nothing because of the fact that all of the voting shares of the corporation are not listed on the stock exchange. Because of this technicality a heavy tax penalty is thus imposed on the non-resident shareholders of the company under the provisions of Bill C-95.

We believe that the legislation is intended to give Canadians an opportunity to purchase up to 25 per cent of the voting shares of companies doing business in Canada. In fact, if I am not mistaken, this intention has been expressed by the honourable Minister of Finance. Consequently if such an opportunity is given to Canadians, it seems unfair to penalize such a company and its foreign shareholders because of the technicality whereby all classes of their voting shares are not listed on a Canadian stock exchange.

You may well ask what our special interest is in proposing this minor amendment and the facts are as follows:

My company, Canadian Petrofina Limited, is a Canadian corporation which has been in business in Canada for over 10 years. All the officers, all the employees and 12 of the 17 directors are Canadians. One class of voting stock is listed on the Toronto, Montreal, Calgary and Vancouver stock exchanges, and has been very actively traded by Canadians in recent months. The other class of shares, which are also voting, is held by Petrofina, S.A., of Brussels, the parent company of Canadian Petrofina Limited. This latter class of shares is not listed as it is not possible to meet the distribution test required by the various stock exchanges.

Senator BOUFFARD: What is the proportion of the two stocks?

Mr. MULHALL: The parent company has two classes, the one participating preferred in which there are about eight million outstanding, and then the ordinary shares, about 20 million, at a par value of $1. The par value of the

other is $10. That is the unlisted stock. The reason this stock held by the parent company is not listed on the exchange is that it is not possible to meet the distribution test required by the various stock exchanges. Only the common shares are listed. The next question that reasonably comes to mind is why not list some of the stock held by the parent company. The answer is that the ordinary stock ranks second to the preferred stock as to dividends and on winding up. We doubt if it could be marketed because it is not attractive as such.

Thus, while Canadian Petrofina will be able to meet the other tests as to the necessary degree of Canadian content required in this act, it cannot meet the test requiring that all classes of its voting stock be listed on a Canadian stock exchange. We feel there is an area of discrimination here, and accordingly we are requesting senators to amend this legislation by substituting the words:

the shares or any class of shares of the corporation

where it appears in the proposed section 139A instead of the words that presently appear there and which are "the shares of the corporation". That is the only minor amendment we are requesting of you.

I am, of course, only speaking for our company, Canadian Petrofina Limited, but I understand that there are other companies in Canada which have a similar capital structure and would be similarly penalized. We have no other issue with the bill. It is merely a technical drafting error, and we are asking for an amendment along those lines.

The CHAIRMAN: When you say it is only a technical drafting error, that may or may not be. Have you any information that it is only such?

Mr. MULHALL: No, sir, I have not. But it appears that there is some conflict in the sections and that it might possibly be a drafting error.

Senator MCCUTCHEON: The two sections are entirely different.

Senator CROLL: Do you understand that the intention was that there would be 25 per cent of it equity?

Mr. MULHALL: Yes.

Senator CROLL: That is your understanding?

Mr. MULHALL: Yes.

Senator CROLL: You suggest under this section as it reads now it might be 25 per cent of the voting stock. Do you suggest it might be 25 per cent of the voting stock?

Mr. MULHALL: Yes.

Senator CROLL: I think he has a point there.

Senator THORVALDSON: The stock that is listed, is it voting stock?

Mr. MULHALL: And the stock not listed as well.

Senator CONNOLLY (*Ottawa West*): Did the witness say that the stock not listed is not voting stock; it is equity stock? And in your company is 25 per cent of the equity stock held in Canada by Canadians?

Mr. MULHALL: That is not correct. But not more than 75 per cent is held by any foreign company. So we meet the test in that area in a negative way.

The CHAIRMAN: In a negative way. They meet the second test subject only to the inability to list that entire second stock.

Mr. MULHALL: We have approached the exchanges to see if they would accept some of the ordinary shares we are listing and without proper distribution they have refused to do so.

The CHAIRMAN: Those eight million shares, you call them participating preference shares?

Mr. MULHALL: They are a common share because they only participate in earnings to the extent that the earnings are there.

Senator THORVALDSON: May I ask how their voting power compares with the power of the dollar par shares?

Mr. MULHALL: The dollar par shares for control purposes vote one for one. That is how.

Senator THORVALDSON: So control really lies in the parent company.

Mr. MULHALL: Yes, but not within the 75 per cent limit.

Senator MCCUTCHEON: It is a preferred share?

Mr. MULHALL: Yes.

Senator MCCUTCHEON: And it has a preference on winding up?

Mr. MULHALL: Yes.

Senator CROLL: When did you first know that this was contained in the bill?

Mr. MULHALL: Senator, we examined the bill and the changes as they came along, and I must be honest with you and say that we missed this technicality until the last few weeks. As a matter of fact, we missed the technicality.

Senator CROLL: You made no representations?

Mr. MULHALL: We have made no representations for this purpose as we did not see this until three weeks ago—or, we did not realize its impact until three weeks ago.

The CHAIRMAN: I received a letter, which I think was fairly well distributed during the last couple of weeks, calling attention to this point raised by Canadian Petrofina.

Senator BOUFFARD: There are some other companies, also.

The CHAIRMAN: Yes. I might say, Senator Croll, that this matter has been discussed in relation to other companies which have somewhat similar problems with the department. I am not privileged to go any further than that.

Senator CROLL: Before it was indicated, or after it was indicated?

The CHAIRMAN: No, after the bill came down. This only disclosed itself in the bill.

Senator CROLL: I have never heard of this before, and I certainly did not look for it until it was brought up here. No one wrote to me about it, or spoke to me about it, but the department has been spoken to about it?

The CHAIRMAN: In some connotations, yes.

Senator CROLL: Let us speak English. Were they spoken to or not?

The CHAIRMAN: Yes. Is not "connotations" an English word?

Senator CROLL: Well, in using the word "connotations" you are starting to mix things up a little bit.

The CHAIRMAN: Maybe for you, but not for me. Is there anything else senators wish to ask this witness? Thank you very much, Mr. Mulhall.

We have next Mr. C. Wilson Seale, Vice-President of Miron Company Limited. They are manufacturers of building supplies, concrete and cement. Will you proceed, Mr. Seale?

Mr. C. Wilson Seale, Vice-President, Miron Company Limited: Mr. Chairman and honourable senators, I would like to express my appreciation of appearing before you today. I find that our position is somewhat similar to that of Canadian Petrofina, except that we would like to dwell a little more on the 25 per cent share ownership.

I have prepared a submission in which I touch briefly on the history of the company. Our parent company had intended to build a cement plant in eastern Canada, and it eventually purchased the present operation from the Miron family of Montreal. When the company was established the capital structure was set up with two classes of stock, as in the case of Canadian Petrofina: common shares of $1.00 par value and non-callable, non-cumulative participating preferred shares of $10 par value.

The parent company invited the participation by the Canadian public, and there was an initial offering of 500,000 of these preferred shares sold on the Canadian market. Like others in this matter these shares have preference values only to the extent of priority on payment of dividends and priority on payment of break-up value. They are classed as common shares under the Income Tax Act.

We felt that the shareholders, particularly the Canadian shareholders, would have a fully participating equity share with additional security in the preference values.

Our company is resident in Canada and employs up to 2,000 employees. The majority of our directors are resident in Canada, and six out of thirteen are Canadians. I have listed the six Canadian directors. The shares are listed and are actively traded.

The CHAIRMAN: What is the number of shares in the two different classes that are issued and outstanding?

Mr. SEALE: We have 4 million common shares of $1 par value.

The CHAIRMAN: Authorized or issued?

Mr. SEALE: We have issued 4 million shares. We have issued 2,260,000 preferred shares.

The CHAIRMAN: And they are all voting?

Mr. SEALE: They are all voting one vote per share.

Senator THORVALDSON: Have the preferred shares a par value of $1?

Mr. SEALE: The common shares are of par value $1, and the preferred shares are of par value $10.

The CHAIRMAN: Let us come to your problem.

Mr. SEALE: I have stated that it is our hope and wish that the company act as a good corporate citizen of Canada and be so considered. However, we find ourselves now excluded under this proposed legislation from certain benefits accorded to those companies that qualify under the restrictive wording as "having a degree of Canadian ownership".

I submit to you, gentlemen, that the right to share in the profits of an enterprise is equally as important as the voting interest, and I would propose that the concept of basing the test of Canadian ownership or of non-resident ownership on voting shares be broadened to include the percentage ownership of the equity capital. In our case not more than 75 per cent of the equity capital is owned by our parent company, and, in essence, not more than 75 per cent of the profits can be accorded to our parent company.

If we accept this premise as being true we would then come under the classification of having a degree of Canadian ownership. We have Canadian stockholders. We are a Canadian company.

The second point I make, gentlemen—and it is similar to that made by Canadian Petrofina—is that all voting shares cannot be listed in our case either, and an amendment is requested that it read "any class of shares having full voting rights under all circumstances". We feel that that amendment is very desirable. It is not ony applicable to our company, but to many other companies as well.

The CHAIRMAN: Are there any questions? Thank you very much, Mr. Seale.

We also have with us Mr. A. E. Kress, who is the executive vice-president of the Federation of Automobile Dealer Associations of Canada. Mr. Kress?

Mr. A. E. Kress, Executive Vice-President, Federation of Automobile Dealer Associations of Canada: Mr. Chairman and honourable senators, my purpose is to express briefly our thoughts with respect to the order in council applied to cars of over $5,000 which, of course, was a subject of your discussion last evening. I was very interested in the presentation by Senator Bouffard and by your chairman.

I might say, to anticipate possible questions from Senator Croll, that in July we made submissions with respect to the budget announcement, and in that we raised in particular three issues, all of them based on the question of equity or fairness in respect to the proposed regulation.

These three issues were, first, that transportation costs placed customers at a disadvantage the further they were removed from Oshawa, Oakville or Windsor. The second was with respect to local, municipal or provincial sales taxes for the same reason that, for instance, a customer purchasing a car of over $5,000 in the City of Montreal might pay 6 per cent sales tax whereas a customer buying an identical car in Calgary would pay no sales tax. The third item was with respect to the question of an arbitrary . . .

Senator THORVALDSON: In Winnipeg also there is no sales tax.

Mr. KRESS: That is correct, sir. The third one was the question of taking an arbitrary standard of $5,000 and saying that you were permitted capital write-off up to $5,000, but if you were unfortunate enough to purchase a car which cost $5,060 you would have no write-off. We felt that here was a case of fairness on all three issues, and we covered that in our submission.

The Honourable Minister of Finance replied to that with a statement that it was proposed to establish a general rule and therefore there would be no consideration given to any of the three things. We followed that up with a formal protest. Prior to receiving an answer, on order in council was passed on October 17 and I might say to our surprise transportation and taxes were eliminated. We presumed that our submission appealing on the question of fairness had been given consideration in those two but for some reason had not been considered with respect to the others.

We again pushed them back and as late as November 18 we were advised by the minister that consideration had been given but it was felt that if our suggestion were implemented it would water down the effect of the legislation.

We wonder what is meant by the word "effect". We wonder why, if equity and fairness were considered in the first two, why it was not considered in the other.

We had only one other question which we raised and we again felt it was in the area of fairness.

Various companies in Canada operate liveries and these limousines are purchased, sometimes at a value of $13,000, and these form the capital stock in trade for that company. We suggested that they be excluded. Unfortunately, when the order in council appeared, it said that they would exclude limousines which carried over nine passengers. So far we have been unable to find anybody who makes such limousines.

That, gentlemen, is my message, and if you have any questions with respect to it I will be pleased to try to answer them.

Senator BOUFFARD: Mr. Kress, would you have any idea as to what happened in England and in the United States on those regulations which were practically similar?

Mr. KRESS: I understand that in England where it was introduced it only survived one year and then was given up.

Senator BOUFFARD: What happened in the United States?

Mr. KRESS: I do not know, sir, what happened in the United States.

Senator BOUFFARD: What can we do about an order in council? We have no jurisdiction to do anything in this committee.

Mr. KRESS: This I realize of course is the number one problem. All we can hope—

Senator O'LEARY (*Antigonish-Guysborough*): Do you feel that you are being prejudiced against?

Mr. KRESS: We do not like to use this word "discrimination," and so on, but to be quite honest we do.

Senator BURCHILL: Your proposal is that if you bought a $6,000 car you should be allowed to depreciate $5,000?

Mr. KRESS: We think one ought to establish a platform. If a man wants to spend $9,000 let him depreciate up to $5,000 and not beyond it.

Senator BOUFFARD: I feel completely in sympathy with you but I do not know what we can do.

The CHAIRMAN: We have not any authority. There is substantial provision in the act enabling by regulation the amount of write-off to be determined. It is being determined by regulation and we cannot control regulations.

Senator BOUFFARD: We are sympathetic.

The CHAIRMAN: It may be that if you keep on pressing it and if we keep on thinking about it, something might come of it.

Mr. KRESS: Thank you very much.

The CHAIRMAN: It is 22 minutes after five and we have heard all the witnesses to be heard. In the ordinary way we would get down to consideration of the bill section by section with the assistance of departmental officers. My only suggestion is that unless you wish to meet longer today, we should adjourn until 9.30 in the morning.

Senator LAMBERT: Will we have the benefit of the minister?

The CHAIRMAN: The minister will be available tomorrow. That is what he has assured me. At any time we need him to come in, he will be ready. I think we should collect our problems and, when we are ready, invite him in and we can have our discussion.

Senator DAVIES: I do not understand the reference to order in council. Has not the bill been amended already by order in council?

The CHAIRMAN: There is nothing in the bill about this $5,000 limitation of value required. That was in the budget speech but it is dealt with by regulation. There is nothing in this bill that deals with that important matter.

Senator KINLEY: Might that $5,000 have been decided on in order to keep out the imported car?

The CHAIRMAN: It was not stated to be that.

Senator KINLEY: That would stop its importation.

The CHAIRMAN: It may be. Honourable senators, it is agreed that we meet in room 256 tomorrow morning at 9.30?

Hon. SENATORS: Agreed.

Whereupon the committee adjourned.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, November 28, 1963.

The Standing Committee on Banking and Commerce, to which was referred Bill C-95, an Act to amend the Income Tax Act, met this day at 9.30 a.m. to give further consideration to this bill.

Senator SALTER A. HAYDEN (*Chairman*) in the Chair.

The CHAIRMAN: I call the meeting to order. The sittings of the committee are resumed.

At this stage we are going to proceed with a section by section consideration of the bill. I can also tell you that I saw the minister last night and he will not be available until Tuesday morning, so I have fixed the date with him for Tuesday morning next at 9.30. We have with us this morning officials of the Department of Finance and also the Department of National Revenue.

Senator CROLL: I gather what you will do is to go through the non-controversial sections and explain them, just leaving the two or three controversial sections?

The CHAIRMAN: There are about three sections that we will stand until Tuesday morning.

Senator CROLL: All right.

The CHAIRMAN: Are we ready to proceed now with section 1 of the bill? Mr. Irwin, are you going to lead the explanations, with Mr. Harmer coming in wherever he wishes?

Mr. F. R. Irwin, Director, Taxation Division, Department of Finance: If you wish, sir. We are entirely in the hands of the committee. Our objective is to answer any questions we can and provide any information that may be needed to help you in your consideration of the bill.

If you think it would help, I could give a brief word of explanation about clauses or subclauses as we come to them.

The CHAIRMAN: That is what I thought you might do. We are starting in with section 1. Would you deal with that one briefly?

Mr. IRWIN: Yes, Mr. Chairman, it might be helpful if we looked at clause 1, subsection 3 of clause 2, and clause 27 together because these three parts of the bill provide the amendment dealing with group life insurance.

As background to this amendment I might mention that many employers provide group life insurance protection for their employees. This costs the employer money and is a benefit to the employee. This benefit is not taxable in the hands of the employee unless it is for coverage in excess of $25,000. In the past the law has referred to group life insurance policies. I think the officials and most people regarded this as group term life insurance, and it is our understanding that most of the coverage sold in the past has been group term life insurance. But recently it has come to the attention of the Government that permanent type policies, policies with substantial cash surrender

29824-0—3½

value, even endowment type policies, could be sold under the heading of group life insurance, and this would enable employers to provide some employees, perhaps key employees, with a substantial tax-free benefit. This amendment merely changes the expression "group life insurance policy" to read, "group term life insurance policy".

Clause 27 defines the expression "group term life insurance policy" as a group life insurance policy under which no amount is payable except in the event of the death or disability of the taxpayer.

Senator ISNOR: I thought before it came into effect any type of insurance, group insurance, would have to meet with the approval of the department?

Mr. IRWIN: No, sir. There was no provision in the law that this kind of employee coverage had to be approved or registered or anything of that kind.

Senator ISNOR: I am reasonably sure that the insurance companies when they go around selling group insurance or life insurance as a group to an employer invariably say this meets with the approval of the taxation department.

The CHAIRMAN: I think what happens is that if this is being sold in connection with a pension plan then it is the approval of the pension plan that is desirable.

Senator MCCUTCHEON: The pension plans have not been approved for some years.

Senator ISNOR: I wonder if Mr. Irwin will clear this question first.

Mr. IRWIN: What the Chairman said is also my understanding. When this is coupled with an employee pension plan such employee pension plans must be registered. The Government does not put the stamp of approval on them, as such, but they do have to be discussed with the Department of National Revenue and have to meet with certain requirements before they become registered employee pension plans.

Senator CAMPBELL: Mr. Chairman, from your knowledge, Mr. Irwin, is it not true that a great many of these pension plans have as a supplementary benefit the group ordinary life insurance schemes attached to them now?

Mr. IRWIN: I am not too familiar with the framework of a great many of these plans.

Senator CAMPBELL: Does that mean to say that the reason is to prevent the companies taking policies which have a cash surrender value?

Senator KINLEY: Or endowment.

Senator CAMPBELL: I am wondering how far it will affect a company which has taken ordinary insurance, which is a very cheap form of insurance, rather than term insurance. My understanding is that in this country there are a great many pension plans which have as a supplementary basis group insurance.

Senator KINLEY: The life insurance usually terminates when the man leaves his employment.

Mr. IRWIN: That is term insurance.

Senator CAMPBELL: That is not strictly term insurance—the insurance terminates when he leaves his employment except he takes it over himself.

The CHAIRMAN: Senator Campbell, we cannot look at the word "term" in this context as we ordinarily know it. We are to look at it in this term here. If it has benefits on death or disability it comes under the description of group term life. If it has something else, that element may have to be valued if this becomes law.

Mr. IRWIN: Yes; our understanding is that few, if any, policies with cash surrender values have in fact been sold, but there have been suggestions that

this could be done, and insurance companies naturally were uncertain and asked for clarification.

Senator McCUTCHEON: I know at least one very large group where it is what you might call group whole life insurance with cash surrender values which can be quite substantial by the time a man comes to retirement. It is not limited to key employees; it covers the great mass of white collar employees in a large company. I am interested in hearing some explanation of the question the chairman raised when he was speaking on this matter in the chamber, as to what is going to happen, and how are you going to apportion it to decide what must be charged back to the employees. I can assure you with union employees it is not going to be a very popular move if suddenly, having had this benefit for some little time, they get a little T-4 return to say that now they have to pay for this group life insurance which had been bargained for across the table.

Senator KINLEY: Without any contribution from the employees.

Mr. IRWIN: Of course it is only the employer's contribution that becomes income. This is the benefit conferred on the employee. In some of these group policies the employer's contributions may be quite small.

Senator McCUTCHEON: Are you saying in effect that if you could demonstrate that the employer's contribution was no more than the worth of the term element in the insurance that there would be no charge on that?

Senator CAMPBELL: Not under the act as drawn.

Mr. IRWIN: This will of course be a matter for the administration of the Department of National Revenue. I couldn't give any assurance on that point.

Senator CAMPBELL: Is there a representative of the Department of National Revenue present?

The CHAIRMAN: Mr. Harmer.

Mr. HARMER: I don't know what the formula is. As Mr. Irwin explained when we talked to the insurance company representatives the question raised was how one went about determining how much of the benefits were related to the employer's contribution and how much to the employee's, but the intention was that only the employer's contribution was taxable, and if it could be shown the employee was making a contribution which provided him with a cash surrender value, then that part of it certainly would not be taxed.

Senator McCUTCHEON: Isn't this the sort of thing of which the officers have said that there are very few such cases? I just happen to know one and there will be repercussions there. Is not this the sort of section that should be made applicable only from here on out rather than upset the employer and employee relationships settled over a bargaining table?

The CHAIRMAN: These premiums are changed from year to year as bargaining takes place. Or perhaps every two years. I have learned that in one of the very large life insurance companies there is not a single policy of this kind issued. They have group life with benefits on disability or death, and with the limitation of $25,000. If the benefit exceeds $25,000, of course, it doesn't get the benefit.

Senator McCUTCHEON: That is true; and it may be true of many other companies. I just know one large industrial company where the reverse is true.

The CHAIRMAN: There may be some abuses.

Senator CAMPBELL: I think if the department are not trying to cover situations that already exist it does not seem to me to be any hardship on the department to make this effective from the present time. Otherwise it means they have to go back and reopen the policies. It does not mean a great deal so far as the revenue is concerned or the question of tax. As a rule you enter

into these arrangements under the law as it formerly existed. And there is no warning that one should protect oneself against something like this.

The CHAIRMAN: I would like to apply this more broadly.

Senator BURCHILL: As the act stands at present will it be retroactive?

Senator MCCUTCHEON: No.

The CHAIRMAN: There are two things which you can do. You can try to reach some understanding with the department as to what is the element in dollars of the employer's contribution to the premium that is referable to this additional benefit, or from here in you may have two policies where one grew before, that is, you will have the one where the full benefit is deductible, as this is a term life, and the other policy provides the other benefits, there might be a savings feature in the policy or other cash payment.

Senator MCCUTCHEON: There is a savings feature in any life insurance policy outside the straight term insurance policy. If as the witness has said there are very few of these cases—you quoted one large Canadian life insurance company and I suspect I know its name—that has none of these policies on its books. If there are very few why upset these relationships that now exist between employer and employee?

The CHAIRMAN: Mr. Irwin has been helpful but if it gets to the stage of policy, we cannot expect him to answer that question.

Senator MCCUTCHEON: Shall we reserve this for the minister?

Senator KINLEY: Mr. Chairman, is the issue as between a straight life policy and a policy that is an endowment, a policy that you can surrender?

The CHAIRMAN: The issue here is a group term life insurance policy and you find them as part of a pension plan. Under this bill when it becomes law, or as the law was before, the employer's contribution to the premium for that group life was deductible to the employer and was not assessable in the hands of the employee as to the benefits.

Senator MCCUTCHEON: No, but the cash surrender value would be taxable in the hands of the employee. The disability benefit would be. Anyhow, the department gets it sooner or later.

Mr. HARMER: No, Senator McCutcheon, I do not believe that.

Senator CROLL: You do not believe the department gets it, is that what you said.

Mr. HARMER: Yes.

Senator MCCUTCHEON: I would like an explanation of that. Surely when an employee takes a cash surrender value that is income.

The CHAIRMAN: Wait a minute now. You mentioned cash surrender value. That takes you outside this definition of a group permanent term life policy.

Senator MCCUTCHEON: I am making the argument that in applying these two policies that are already in force because while the department may forgo a small amount of revenue now, eventually, if the cash surrender value is taken, it is added back to the employee's income. It is true there is a special provision in the act where he can average it over three years, but he just does not have that free.

Senator KINLEY: Isn't this type of taxation discriminatory?

Mr. HARMER: That is not my understanding, Senator McCutcheon.

Senator KINLEY: It seems to me, Mr. Chairman, that this taxation can be described as a little discriminatory. Why should people who have such a contract keep it and others cannot take advantage of it. Taxation is not retroactive, as a rule.

Senator CRERAR: Mr. Chairman, I would like to ask if there has been any attempt made to determine what amount of revenue is involved in this change?

Mr. IRWIN: There is little or no revenue involved because it is our understanding that up to now there have been few, if any, of these policies sold. If the law were left as it is now and if employers began to sell group permanent type policies with substantial cash surrender values then there might be an important revenue consideration.

Senator MCCUTCHEON: I am not arguing against the section going in. I say, exempt those few, if any, that now exist.

Senator CROLL: Assuming what Senator McCutcheon says is right, would it be possible to deal with it by way of regulation?

Mr. IRWIN: I should think this would be difficult to handle by regulation.

Senator CROLL: You think it would be difficult?

Mr. IRWIN: I do not quite know how it would be done. On the point of making this section apply only for new contracts I think there might also be some difficulty. For example, if there were an existing contract with a number of employees with insurance for which there was a cash surrender value, I suppose if we exempted that contract completely it could be expanded to a very large extent and these people would be free from the application of the new provision.

Senator MCCUTCHEON: Of course you would not allow them to increase a contract or amend it to provide greater benefits. It would be that specific contract as it existed in the dollar amounts as of that day.

Senator KINLEY: What about a new man coming to work a plant? For instance, a new man coming into my plant would not be able to get it, and the man who was in before is able to have it.

The CHAIRMAN: That happens in an infinite variety of situations.

Senator MCCUTCHEON: I would not object to that either.

Mr. IRWIN: I might make one further observation. As I mentioned earlier this matter was brought to the attention of the Government by the insurance companies, and although we cannot consult with them while law is being drafted they did indicate the lines which they thought any amendment, if there were to be one, should follow and to the best of my knowledge they are not dissatisfied with what is in the bill.

Senator MCCUTCHEON: I do not care if the insurance companies are satisfied or not. I am talking here of the employee who has such a policy.

Senator HUGESSEN: Everybody who makes a contract runs the risk of having it affected by future taxation.

Senator DAVIES: Is this retroactive?

The CHAIRMAN: No.

Shall section 1 carry?

Agreed.

Senator MCCUTCHEON: Mr. Chairman, are you reserving my question for the minister?

The CHAIRMAN: You can make a note of the question and ask the minister.
Subparagraph (3) of section 2 carries,—That is the limitation.
Shall section 27 carry—That contains the definition.

Agreed.

The CHAIRMAN: In section 2 of the bill we have subsection (1) which we have not dealt with. Mr. Irwin, what have you to say about this?

Mr. IRWIN: Here it might also be helpful to look at part of two clauses, subclause (1) of clause 2 and clause 3 together provide an amendment dealing with annuities, and to explain this it might be helpful if I said a word about the present practice in the taxation of annuities under the existing law and regulations.

As you know many people make payments over a long period of years to a life insurance company or to the Government Annuities Branch to buy a life annuity to become payable when they are 60 or 65, or some year in the future. First let me say that those premiums or contributions that are made to the company or to the annuities department earn interest as they accumulate. Under the present practice that interest has not been subject to income tax. When the annuity starts to be paid out to the annuitant a calculation is made which divides the payments into what we might call a return of capital and interest. The interest is interest that will be earned by that accumulation from that date forward, so the interest that has accumulated on the premiums, perhaps over a long period of years, is not taxed. There is no intention in this amendment to change that so long as the annuitant takes his life annuity.

Recently it has come to the attention of the Government that policies can be sold which do not have to be taken as a life annuity. A person can put in sums of money, let them accumulate at interest and then take the proceeds, not as a life annuity but as a lump sum or in one or two payments; and in this way he can receive, perhaps substantial, amounts of interest tax free.

What is proposed here is that the interest portion of the proceeds of an annuity contract, where the proceeds are taken in a lump sum or in a form of settlement other than a life annuity, shall be subject to income tax.

Senator MCCUTCHEON: If I take out an ordinary life contract—and we use pretty broad language there—when I am 20 and I make payments until I am 65—at 65 my children are all dispersed and I have got a pension from my employer—and I surrender that life insurance contract, the amount I get, if I have taken it out at a young enough age, will be considerably more than the premiums I have paid in. Now, what happens to me?

Mr. IRWIN: This law does not change the taxation of life insurance policies.

Senator MCCUTCHEON: Even though a policy has an option in it, as most life insurance policies have, that I may take the proceeds and put them into an annuity at an agreed rate—and there is hardly a life insurance policy sold which does not contain this option.

Mr. IRWIN: As Mr. Harmer pointed out, you become the beneficiary and I think the interpretation is that you have taken the proceeds of your life insurance policy and used them to purchase an annuity.

The CHAIRMAN: The interest on it will only start to arrive at that time.

Senator MCCUTCHEON: If that is correct, if the interest only starts from that time forward—

Mr. IRWIN: One can argue that this is not completely logical, because under the kind of contract you speak of, and under many life insurance contracts, there can be interest portions which are not taxed, but this amendment goes only so far as to tax the interest portion earned on savings contracts where there is no life contingency involved.

Senator MCCUTCHEON: A normal endowment contract would not be caught by this?

Senator BOUFFARD: What is the rate of tax? What is the rate of interest?

The CHAIRMAN: There is a formula that I believe the department applies.

Mr. IRWIN: If a person enters into one of these contracts of the kind I am referring to, puts in money for a period and does not take a life annuity

but takes a cash accumulation, I believe the method of calculation would be to look at the payments put in and look at the amount taken out, and the difference is interest.

An Hon. SENATOR: Would it be taxed at one year—when taken out?

Mr. IRWIN: It would be included in income of one year—I am sorry—there is an option. Mr. Harmer has just pointed out that section 35 does permit an option, where interest and principal payments are combined and the interest portion is taxable. Section 35 permits the tax to be spread over three years.

Senator MCCUTCHEON: This is intended to apply only to what I might call a pure endowment contract, with no life contingency, no death benefit or return of premiums and with an annuity option?

Mr. IRWIN: I think that is correct, sir, with one minor clarification. I think the regulations to be passed under authority in this matter will have to guard against the possibility of tacking on a very small amount of life insurance to a big annuity contract and trying to say that this is a life insurance policy.

Senator MCCUTCHEON: You are just going to step from one bog into another.

The CHAIRMAN: Shall section 3 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: That means that sections 1, 2 and 3 have passed.

We come to section 4, which deals with the lease option agreement provision.

You will notice that section 4 repeals section 18 in the act where you had these provisions about lease option agreements.

The rest of clause 4, I believe, deals with the transition—how you adapt this repeal to situations where there are actual lease option agreements operating for a number of years, or where the deal has been completed by the transfer of the property. That is the purpose of these transition provisions, is it not?

Mr. IRWIN: That is correct.

The CHAIRMAN: Could you very briefly state what they are?

Mr. IRWIN: Yes. There are two or three situations which must be covered. These are mentioned in the explanatory notes given opposite the bill. The situation briefly might be as follows. A taxpayer who has acquired property before 1963, under a lease option arrangement, would have his capital cost established under the section 18 rules. It is provided that the capital cost established under the section 18 rules will not be disturbed. He may continue to claim his capital cost allowances on that basis.

Secondly, there will be taxpayers who have paid rents under a lease option arrangement in excess of the capital cost allowances that they were allowed to deduct. Those taxpayers will be allowed to catch up, in that they will be allowed to deduct the amount of the rents they have actually paid in excess of the capital cost allowances they have been allowed to deduct in the past.

Senator MCCUTCHEON: They get a windfall benefit.

Mr. IRWIN: Where taxpayers have deducted capital cost allowances in past years under one of these arrangements, in excess of the rents they have paid, there is no attempt to go back and recapture that excess deduction that has been made by those taxpayers.

Senator MCCUTCHEON: Then what is the situation from here on? We are right back to where we were a number of years ago, are we?

I rent property for 25 years and I have an option to buy it for "X" dollars at the end of 25 years. I will be allowed to charge my rents and operating expense, capital cost allowances will be taken by the landlord. My capital cost allowances will be established on the basis that I have paid for the property when I took it up. Is that it?

Mr. IRWIN: That is right, senator.

Senator BURCHILL: In the rental of a machine—a lot of these machines, as you know, are rented, bought under a rental—

The CHAIRMAN: Lease option.

Senator BURCHILL: Are we allowed to deduct under these new regulations?

Senator BOUFFARD: It does not affect machines, only property.

The CHAIRMAN: As long as you are paying rent under a lease option agreement, when this bill becomes law, you will charge it up as a rental, as an expense of operation, and the owner will get his capital cost allowance.

Senator BURCHILL: Then it alters the situation.

The CHAIRMAN: It alters it completely from what the law has been for a number of years.

Senator BURCHILL: But from the point of view of a person renting a machine, it does not alter it?

The CHAIRMAN: It does, because as long as this section 18 was in force it prevented you from charging up rent as an expense; the so-called lessee only got a capital cost allowance

Senator BURCHILL: You could not charge a rent in excess of the capital cost allowance.

The CHAIRMAN: He does not get a deduction as rent.

Senator MCCUTCHEON: Not as rent.

Senator CAMPBELL: Does this section affect any agreements already in existence whereby ships may be chartered to a company and both the charter hire and the depreciation could be taken?

Mr. HARMER: Senator Campbell, to the extent that the question relates to the lessee, yes, it does affect him. He cannot, if this bill becomes law, deduct capital cost allowance but he can deduct rent.

Senator CAMPBELL: But at the present time they are entitled to deduct both, are they not?

Mr. HARMER: No, sir. Both the lessor and the lessee can at the present time deduct the capital cost allowance, but the lessee cannot deduct rent.

Senator CAMPBELL: In the final analysis, of course, in the exercise of his right to purchase he gets the benefit of depreciation.

Senator KINLEY: In the case of a company which is created by the Government whereby factories are built throughout the province by an agreement over a period of years, and they can buy at a depreciated value and then pay interest on the money, how does that come into the income tax picture?

The CHAIRMAN: I suppose paying the interest on the money is a form of rent.

Senator KINLEY: Yes. They lend the money, really, and they usually give the company a contract to build the building themselves; but they don't own the property. Does that come into the income tax field? The fact that the province is doing that, does it relieve it from income tax?

The CHAIRMAN: Well, it is not the Government, it is a crown company, I believe.

Senator KINLEY: Yes, a crown company, that is what it is.

Mr. HARMER: I do not think that would affect the position of the lessee.

The CHAIRMAN: If the lessee has made an outlay as an expense he is entitled to charge it to operations.

Senator KINLEY: The interest would be an expense, but when it comes to the depreciated value—

The CHAIRMAN: Well, he has no interest in the depreciated value until he owns it.

Senator KINLEY: But he can buy it at the depreciated value.

The CHAIRMAN: Yes. Of course, you could not have a depreciated value as against the original value unless someone was writing it off in the meantime.

Senator KINLEY: It is the owner who writes it off.

The CHAIRMAN: Yes. Section 5, Mr. Irwin, I think goes with section 14.

Mr. IRWIN: Yes. Clause 5 repeals two subsections of section 20, and this is consequential upon the amendment provided by clause 14.

The CHAIRMAN: You will find a number of pages here dealing with the matter of income tax in relation to bankruptcy. They seem to be contradictory words; but is there any short explanation we can get?

Mr. IRWIN: Concerning clause 14?

The CHAIRMAN: Clause 14.

Mr. IRWIN: I do not think there is any short explanation of the rules that are provided, sir. It is quite complicated. Fortunately, they do not apply to a great many people. Up until now there are few rules in the income tax law dealing with bankrupts, and of course it is unusual for a bankrupt person to have income and to have income tax worries, but it can happen. For example, individuals can be declared bankrupt and continue to work and earn a salary.

Senator MCCUTCHEON: Corporations, too.

Mr. IRWIN: Also corporations. The act at present does not include any special provisions governing that. As a result, the law seems to say that the trustee in bankruptcy must be taxed as an individual at individual rates. So it was thought that some law should be provided to take care of the situation that the trustee in bankruptcy might find himself in. The amendment provides that if a corporation becomes bankrupt the trustee in bankruptcy shall be deemed to be the agent of the bankrupt and the estate of the bankrupt shall be deemed not to be a trustee for income tax purposes. The property of the bankrupt is deemed to remain in its hands, and any income from carrying on the business of the bankrupt is the income of the bankrupt and not of the trustee. There are rules which say that a corporation shall be deemed to have commenced a new tax year on the date of becoming bankrupt. The taxable income and tax, if any, of the bankrupt corporation shall be calculated in the same way as for other corporations. If income tax becomes payable by a corporation during any year that ends while the corporation is bankrupt the corporation and the trustee are jointly liable to pay the tax; but the trustee is only liable according to the extent of the property of the bankrupt which is in his possession. The rules for bankrupt individuals follow the same principles.

The CHAIRMAN: Two questions arise. Perhaps we are taking an exercise which is not very important from a revenue point of view. The trustee, although he is liable here for payment of tax, the liability is limited to what he has in hand; but there is some suggestion that in providing, as you have on page 9, subparagraph (e), you may be giving the Crown an undue preference contrary to the Bankruptcy Act. I am not pressing this very hard; but when you take the concept that it is a new business on the day the bankruptcy occurred, I suppose you are looking at the operations in that period,

and if it produces income, well, there is liability to pay tax. It may be that in paying that tax, though, you are using moneys that are part of the bankrupt's estate, and all the other creditors have a position in relation to any of these funds. I am just pointing it out.

Senator KINLEY: Have they any rights as to priority?

The CHAIRMAN: Not under the Bankruptcy Act. Under the Income Tax Act where they get to a certain stage, it would be a different matter.

Senator CAMPBELL: May I ask for clarification on one point? Under these provisions the act provides that they shall be deemed to have commenced on the day of the calendar year he becomes a bankrupt, and that the taxation year that would otherwise have ended on the last day of that calendar year shall be deemed to have ended on the day immediately before the day on which he became a bankrupt. Now, ordinarily there are deductions to be made against the income. In the case of a deceased, I think it is the day before his death, or something of that sort, when the calculation shall be made. I am wondering what if any allowances will be made and how they will be calculated in connection with the bankrupt, whether they would be related to the date he became bankrupt, or proportioned over the period of the year.

Mr. IRWIN: Are you speaking of an individual?

Senator CAMPBELL: Yes, an individual.

Mr. HARMER: My impression is that they would not be prorated; the taxpayer would be entitled to a full year's exemption.

Senator CAMPBELL: It is not clear in the act. I suppose that could be dealt with by regulation.

Mr. HARMER: I think failing any mention of it in the act it follows that he would be entitled to the whole. If we want to pro-rate deductions I think we would have to specifically provide so.

Senator CAMPBELL: So the intention is that the entire amount would be deducted?

Mr. HARMER: Yes, sir.

Senator HUGESSEN: Is not that covered under subsection (c)? You have all the bankrupt's rights in regard to that.

Senator CAMPBELL: Except that you are making your calculation on a different period than in the case of the individual. I think the explation I have received is all right.

The CHAIRMAN: Is it agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: That deals with clause 14. We come now to clause 6. This is the loss carry-forward provision. Is that right, Mr. Irwin?

Mr. IRWIN: Yes, sir, clause 6 provides an amendment dealing with business losses. The amendment is in two parts, as you will notice. The first part refers to losses incurred in years preceding the change of control and change of business, and a new subsection (5*a*) is added which refers to losses incurred in any year during which both the business and the control change.

By way of background perhaps I should mention that the law for many years has permitted losses incurred in a business to be carried forward and to be applied against the profits in following years. A loss may also be carried back one year against the profit of that year. The law has not permitted a loss incurred in one business to be carried forward to be applied against another and different business if the ownership of that business has changed. The test in the law was ownership of 50 per cent or more of the shares of the company.

Now, it has come to light that by changing share ownership it was possible to defeat this restriction. The amendment, which adds a new subparagraph (ii) to paragraph (*a*), introduces the test of change of control in place of the old test of change of ownership of 50 per cent of the shares. Thus, if this becomes law, a loss incurred in one business by a company may not be carried forward to be deducted from the income of a different business carried on by the same company if control of that company has changed hands since the end of the year in which the loss is incurred. The new paragraph (5*a*) is intended to prevent a carry-forward of a loss incurred by a company in a year during which both its business and its control was changed.

It will be possible if a business incurs a loss in the first part of the year and its ownership and control change, and it makes a profit in the latter part of the year, to offset the loss in the first part of the year against the profit in the latter part of the year, but any unabsorbed loss may not be carried forward against the profits in a future year of that business.

These rules, as one tries to explain them, are rather complicated, but the intent of the amendment is to improve a restriction that has been in the law for a number of years, and which is intended to prevent people going out and buying a loss company merely for the purpose of using those losses against the profits in a different business.

The CHAIRMAN: Of course, irrespective of what the share position may be in the year in which the loss was incurred, and in the year in which they are attempting to apply that loss, as long as you carry on the same business in respect of which the loss was incurred you can still do a loss carry-forward. It means that in any of these manipulations that may be done you must make sure that you move the assets of the profit-making organization into the company which has the loss, and see that the company carries on that business in respect of which the loss was incurred. It may have other businesses.

Senator BAIRD: But it has to be the same business.

The CHAIRMAN: It is not imposing too much hardship. It is narrowing the roadway a little bit.

Mr. IRWIN: Yes.

Senator MCCUTCHEON: This person who retains control must be related to an associated business.

The CHAIRMAN: I think so.

Senator MCCUTCHEON: Control of a public company can change without any intent at all.

Mr. HARMER: I do not think this requires them to be related, sir.

Senator MCCUTCHEON: I think you could select a different group of persons added together who control a public company every few days, if you want to, unless there is one group which has absolute control.

Senator CRERAR: There is a point I would like a little information on. I might say this is a bit over my head. Income tax law is about the most complex thing you can find in Christendom. Take the example of a grocer who has goodwill but he has been unfortunate and has incurred losses. He disposes of that business, or the control of it, to someone else. He has losses and he has also liabilities. The purchaser accepts the situation and accepts the liabilities as well as the losses. As I understand it, the purchaser would not be in a position to carry forward the losses against the profits he might make in the year, but has has to carry forward the liabilities.

Mr. HARMER: He would still be allowed to carry forward the losses if he continued to carry on the same business.

Senator CRERAR: He would be?

Mr. HARMER: Oh, yes.

Senator McCUTCHEON: Could I have an answer to the question I raised? Surely, this must be referring to associated persons because in any public company with not too wide shareholdings but whose shares are traded regularly you could pick out a different group of persons every day who control the company, as long as there is not one group which has absolute control. Surely, that is not what is intended, but that is what this says, as I read it.

The CHAIRMAN: I think what it really means by "person or persons" are persons who have joined for the purpose of acquiring control.

Senator McCUTCHEON: I value your opinion very highly, Mr. Chairman, but will not the department agree that that is the interpretation?

Mr. HARMER: I am afraid not, sir, but I do not think your fears are too well founded because, as has been pointed out, not only does control have to change but the business has to change. For a public company the business is not going to change.

Senator McCUTCHEON: I would not be too sure about that.

Mr. HARMER: This requirement is that there must be a new group of persons who did not have any shares before who now control the company, so that this is a set of circumstances which, surely, would not happen very often.

Senator McCUTCHEON: No, but what about subsection (2)? That does not refer to having any shares. It refers to the control of a corporation being acquired after June 13, 1963 by a person or persons who did not control the corporation at any time during the preceding year.

Mr. HARMER: I am sorry; I was looking at the wrong paragraph.

Senator McCUTCHEON: It does not matter whether they have shares or not.

The CHAIRMAN: Under subparagraph (ii) you could have somebody with 50 per cent of the shares who, after June 13, bought another share and so obtained control. Under the shareholding basis he would not be entitled, but if the business was carried on as it was formerly he would still be entitled, to a loss carry forward.

Senator McCUTCHEON: But supposing the business was not carried on as before? Public companies do not always continue from the cradle to the grave to carry on the same business. Would there not be . . .

The CHAIRMAN: I suppose the theory behind all this is that the Government is not going to permit what you might call a trading or a business in losses.

Senator McCUTCHEON: I have no doubt at all about the intention, Mr. Chairman, and I am in accord with the intention. I just say that as now drafted it is very wide, and the representative of the Department of National Revenue does not want to commit himself to your view of the law.

The CHAIRMAN: I noticed in making his explanation Mr. Harmer used the same phrase I did when he talked about a group of persons acquiring control. That is the only way in which you can look at it, it seems to me.

Senator THORVALDSON: The prospect Senator McCutcheon suggests would be very rare.

Senator McCUTCHEON: Well, I have made my point.

Senator CAMPBELL: I do not know it is rare. While I am sitting here I happen to recall a certain company which is very heavily indebted to the bank. Its control is in the hands of a group of people, but it is far from being 50 per cent control. That company is going to cease doing the type of business it is doing now, and right now it is engaged in researching as to what other fields it might get into. They came to the conclusion they did not have the manage-

ment capabilities or anything else, and they were tabbed with a very heavy loss. It seems to me it would be a tremendous injustice to that company which is trying to resurrect itself not to have that loss carried forward. It is intended by the act to prohibit them going out and buying companies with heavy losses and through mergers or the transfer of assets taking advantage of those losses experienced by some other group of people entirely.

The CHAIRMAN: The illustration you are giving would not be affected by the original section or this proposed amendment.

Senator CAMPBELL: Why not?

The CHAIRMAN: Because you have not indicated the shareholding is going to change.

Senator CAMPBELL: The shareholding could very easily change.

The CHAIRMAN: The share control would have to change as well as the business changing.

Senator CAMPBELL: It could very well.

Senator MCCUTCHEON: If it is a public company control changes from one group to another every day.

Senator CAMPBELL: This is in the case of a public company, and the shares are listed on the exchange every day.

The CHAIRMAN: When you say "control", the shareholdings change from day to day, yes.

Senator MCCUTCHEON: You can always pick out a number of shareholders, no one of whom owns, say, more than 5 per cent of the stock, but when you add all their shareholdings they control the company. That is the point Senator Campbell is making, I think. The department can take a look at the share register and say, "On a certain day these 150 controlled, but since then the business has changed; it is a different 150 people who have control"—or, "a different 147".

The CHAIRMAN: Before they discuss the control situation, they should change the line of business and afterwards do that. I think that is the way around this.

Senator CAMPBELL: Oh, we will find a way around it.

The CHAIRMAN: The second part of this amendment, Mr. Irwin?

Mr. IRWIN: As I mentioned, subclause 2 adds a new subsection (5a). This refers to a business loss incurred in the year during which both the business and control changed. As I explained a minute ago, the loss incurred within the year may be offset against profits within the year, but any unabsorbed loss may not be carried forward to be applied against profits in the following year.

The CHAIRMAN: Carried?

Senator MCCUTCHEON: I have some reservations, Mr. Chairman.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 7.

Mr. IRWIN: Clause 7 deals with family assistance payments made to children of new Canadians. As you know, children of new Canadians are not immediately eligible for family allowances, but they do receive family assistance payments, and the purpose of this is that the parents of such children shall be taxed as if they were eligible for family allowance payments.

Senator THORVALDSON: This is the old one?

Mr. IRWIN: This has been in each bill since 1956.

The CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 8.

Mr. IRWIN: Clause 8 deals with the special table that is put in the T-1 short form to help taxpayers compute their income tax. In the past this has not gone beyond $3,000 of taxable income. This amendment authorizes a table up to $8,000 of taxable income, and also will permit the table to take account of the abatement allowed in respect of provincial income taxes.

The CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 9. This is to some extent remedial?

Mr. IRWIN: This extends the definition of "taxable corporation" and provides that dividends from such corporations shall be deemed to be from a source in Canada.

This amendment has three or four affects. First, dividends from this kind of corporation will be eligible for the 20 per cent dividend tax credit. Secondly, investments in shares of this kind of company will become more attractive to investment companies and trustees of pension plans who are required to have a large proportion of their income from sources in Canada. Thirdly, dividends paid by this kind of company will not be subject to the 4 per cent investment surtax. Finally, dividends from this kind of company, since they are deemed to be from sources in Canada, will not be eligible for any foreign tax credit.

Senator MCCUTCHEON: What is that last?

Mr. IRWIN: This amendment deems dividends from this kind of company, which is a non-resident company, to be from a source in Canada. Therefore the individual receiving this kind of dividend will not be able to claim a credit for any tax that may have been levied on that dividend by a foreign government.

The CHAIRMAN: In other words, this is a non-resident company carrying on business in Canada. When it comes to issue dividend cheques from, say, the United States, the withholding tax will apply. The person in Canada receiving the dividend, less the withholding tax, will not be able to offset the witholding tax that he paid in the U.S. So long as the withholding tax is not greater than the 20 per cent of the dividend deducted from tax, then it is helpful. If you ever get into an area where there is 30 per cent withholding tax in the U.S., it then becomes of doubtful value.

Senator THORVALDSON: The purpose of that amendment is to take care of the amendment made last year in regard to the Hudson's Bay Company, is that right?

The CHAIRMAN: I cannot say the purpose of any amendment is to deal with a particular situation. I can surmise.

Mr. IRWIN: I would not like to leave the impression this is consequential upon any earlier amendment. The companies described in this legislation are companies which are not resident in Canada, but carry on a substantial part of their business in Canada and have their shares listed on a Canadian stock exchange. I think the Minister of Finance explained it was desired to remove the tax deterrents to Canadians who might want to invest in the shares of this kind of company.

Senator MCCUTCHEON: The minister referred to the company mentioned.

Mr. IRWIN: The minister did mention during the debate that the Hudson's Bay Company was the type of company that would qualify under this.

Senator ISNOR: Mr. Irwin, line 42 gives the definition of the term and prescribes a prescribed stock exchange in Canada. I have in mind, of course, the stock exchanges in Montreal and Toronto have listings of the Atlantic divisions. Are the Atlantic divisions included in that definition of yours?

Mr. IRWIN: There is no definition in the legislation before the committee. It merely refers to "a prescribed stock exchange in Canada".

Senator ISNOR: What does that mean?

Mr. IRWIN: A regulation will have to be passed listing the stock exchanges which are prescribed. I cannot say what will be in that list, but I think it is fair to expect that all the stock exchanges in Canada will be listed and will be prescribed. But you can see the difficulty if the law listed various stock exchanges and a new one were to be established in six or eight months' time. That could not be taken account of until the law was next amended. Regulations are much more flexible.

Senator ISNOR: I have in mind local companies, let us say, in the Atlantic provinces, who are well known there and listed in the newspapers. They are listed at certain rates, but from time to time companies of a local nature are persuaded to list in the Montreal and Toronto exchanges for reasons which no doubt the stock exchange has, and I want to know if this listing under the term Atlantic will be included?

Mr. IRWIN: First of all, if the companies are resident in Canada, of course this does not apply.

Senator ISNOR: Yes, that answers my question.

The CHAIRMAN: Is this clause carried?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Section 10; all section 10 does is to repeal the heading and also the section 40A which is to increase the sales incentives brought in last year. Is this clause carried?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Section 11, Mr. Irwin?

Mr. IRWIN: This is consequential upon the repeal of section 40A.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Section 12 is also consequential.

Mr. IRWIN: The same thing, Mr. Chairman.

The CHAIRMAN: That takes us then to section 13 of the bill.

Mr. IRWIN: Clause 13 of the bill provides that the payment period within which corporations must pay their income tax shall be moved forward by two months.

Senator MCCUTCHEON: Why?

The CHAIRMAN: To get the money in faster. I think it's a very good reason. Is there any better reason by way of explanation?

Mr. IRWIN: I would't deny that reason; it does however put corporations on a payment period which is more current. They will be paying their tax in a period which more closely coincides with the period during which their profits were earned. There are advantages from the revenue point of view in having receipts from corporations more quickly reflect changes in business conditions.

Senator MCCUTCHEON: That is from the revenue point of view.

Mr. IRWIN: That is right.

Senator CRERAR: And it will help out the immediate needs of the Government.

Mr. IRWIN: This change is anticipated to produce a once-only bulge in revenues in 1964-65 and in the next fiscal year.

Senator MCCUTCHEON: The next two fiscal years.

Senator THORVALDSON: Approximately how big will that bulge be?

Mr. IRWIN: The amount estimated over the next two years including old age security tax is about $220 million.

Senator MCCUTCHEON: The minister said $165 million in his press release for 1964-65. So that all you are doing is taking $165 million from the working capital of business.

Senator KINLEY: In the new year now you don't have to pay for 1962-63 until June of 1964. Does it move it back so that you get to pay more quickly?

Mr. IRWIN: This does not affect companies whose fiscal year ends before November, I believe it is.

The CHAIRMAN: Yes.

Mr. IRWIN: So that there is no going back before the budget announcement.

The CHAIRMAN: In subsequent years it means that ultimately corporations will be paying their taxes in full four months after the end of the taxation year instead of six months.

Senator SMITH (*Kamloops*): What is the attitude of accountants to this arranged date for returns?

Mr. IRWIN: The representations made to the Government on this point were largely directed to another part of the proposal which would have moved the date for filing forward two months. During the discussion of this at the resolution stage the minister promised to consider this and this bill does not change the filing date for corporations.

The CHAIRMAN: You will be making some of your payments as a corporation before filing your returns.

Mr. IRWIN: You are paying all.

Senator SMITH (*Kamloops*): It brings the dates for filing and paying closer together.

Mr. IRWIN: The date for filing is not changed; the whole 12-month payment period is shifted forward two months.

The CHAIRMAN: Is this clause carried?

Some Hon. SENATORS: Carried.

The CHAIRMAN: We have already dealt with clause 14 and we come to clause 15 on page 12.

Mr. IRWIN: Clause 15 provides for an increase from 15 per cent to 20 per cent in the rate of tax on non-resident-owned investment corporations after 1964. This is to bring the rate of tax on this special kind of investment company into conformity with the proposed 20 per cent rate on dividends paid by certain companies commencing in 1965.

Senator MCCUTCHEON: I suggest this is a controversial section and it should be reserved.

The CHAIRMAN: I think so; because it provides for an increase from 15 to 20 per cent in the rate of tax on non-resident-owned investment corporations becoming effective the 1st of January, 1965. This step-up is really on the income of the non-resident income which may be largely interest, rental or royalties Shall we have this one stand?

Some Hon. SENATORS: Stand.

The CHAIRMAN: It will stand for the minister.

Clause 16, Mr. Irwin?

Mr. IRWIN: Clause 16 introduces a new section 71A which provides a 36-month exemption from income tax for income from a new manufacturing or processing business in designated areas. The clause defines manufacturing or

processing business, and what shall be deemed to be carrying on business in a designated area.

Senator DAVIES: Does this mean distressed areas?

Mr. IRWIN: It means areas prescribed by order in council on the recommendation of the Minister of Industry. Thirty-five areas have been designated. I don't think the Government in designating these areas has said more than they were designated areas of slow growth.

Senator MCCUTCHEON: Like Brantford.

The CHAIRMAN: I think they are determined after consultation with the National Employment Service.

Senator THORVALDSON: I wonder if it was ever really intended in the original legislation that these designated areas would apply to small pockets in Canada. It was my view that these designated areas were rather to apply to large areas such as perhaps half a province like Nova Scotia and referred to by Senator Smith (*Queens-Shelburne*) in the debate in the Senate the other day.

The CHAIRMAN: You are now thinking of the 1960-61 legislation?

Senator THORVALDSON: Yes.

The CHAIRMAN: In that legislation the municipality made the application and then the Minister of Trade and Commerce was the one who dealt with it, and he conferred with the National Employment Service and they studied the area and if they felt it had surplus manpower, according to their formula, in part of the municipality only, the area designated was less than the municipality. Now, when you are talking about Brantford, the designated area is Brant County, which includes Brantford.

Senator CREARAR: This is simply an extension of the principle now in the statutes, the principle of a tax holiday?

Mr. IRWIN: It is the same idea in that a three-year exemption for income from a particular kind of company is to be granted tax exemption.

Senator MCCUTCHEON: Mr. Chairman, I would like to reserve that for the minister if we could.

The CHAIRMAN: Could we have some indication as to the point?

Senator MCCUTCHEON: I do not believe in the whole principle. I would like to hear the minister explain what he hopes to accomplish by this. I recall Mr. Drury was before us, and Mr. Drury did not seem very impressed about this type of incentive even though he is responsible for administering it.

The CHAIRMAN: Then this Section stands for the Minister on the basis of what you say is the principle.

Senator MCCUTCHEON: Yes, sir.

The CHAIRMAN: Very well.

Senator ISNOR: What is the disposition of this clause, Mr. Chairman?

The CHAIRMAN: Clause 16 stands for discussion of the principle with the minister.

Now, we come to clause 17.

Mr. IRWIN: Clause 17 provides a clarifying amendment in connection with deductions for scientific research. It is a technical amendment to make it clear that if an expenditure might be deducted as a charitable donation or might be deducted as an expenditure on scientific research, you cannot have it both ways—it must be deducted as an expenditure on scientific research.

Senator DAVIES: That is fair enough.

Shall clause 17 carry?

Agreed.

The CHAIRMAN: We come now to clause 18.

Mr. IRWIN: This provides two further amendments to clarify the deduction allowed for expenditures on scientific research. The first of these is to correct what might be described as an oversight or a shortcoming of the legislation passed in 1962, and it deals with computing the base amount. You will recall that the 1962 legislation permits a corporation to deduct 150 per cent of the amount spent on increased scientific research expenditure. In computing research expenditures for a year the corporation must in effect exclude amounts it receives from Canadian governments and other Canadians and if these are going to be excluded in computing the amount of your research expenditures similar payments made in the base year should be excluded from the base amount otherwise the calculation won't come out right.

The CHAIRMAN: That is the effect of subsection (1).

Mr. IRWIN: Subclause (2) adds a new section (6) to deal with the situation where capital expenditures might be, if you like, traded by associated companies, and this provision is to prevent a possible loophole.

Shall section 18 carry?

Agreed.

The CHAIRMAN: Section 19.

Mr. Irwin, this is a special Senator McCutcheon section, so give a very clear explanation of it.

Mr. IRWIN: Mr. Chairman, clause 19 adds pipe line companies to the type of companies permitted to deduct exploration and drilling expenses. This will put pipe line companies in the same position as mining companies, oil and gas companies, metal fabricating companies and companies engaged in processing metal recovered by them from mineral ores. I believe the minister explained the purpose of this was to recognize the fact that pipe line companies, like oil and gas companies and metal fabricating companies have a real interest in assuring a supply of natural resources upon which their business depends.

The CHAIRMAN: Shall section 19(1) carry?

Agreed.

Senator MCCUTCHEON: Mr. Chairman, I have no objection to this being carried but I would like to be free to discuss with the minister why there should not be extensions of it.

Mr. IRWIN: Mr. Chairman, subclause (2) is to provide an effective date. It says that this shall only apply with effect from June 13, 1963.

The CHAIRMAN: Shall section 19 (2) carry?

Agreed.

Mr. IRWIN: Subclause (3) of section 19 is to correct an error, a misprint in last year's bill. It changes the figure 2 to read 3.

The CHAIRMAN: Shall section 19 (3) carry?

Agreed.

The CHAIRMAN: Clause 20. This is consequential on the repeal of section 40A.

Shall clause 20 carry?

Agreed.

Mr. IRWIN: Clause 21 deletes paragraph (ja) from section 85I, and this is also consequential on the repeal of 40A.

The CHAIRMAN: Shall clause 21 carry?

Agreed.

The CHAIRMAN: Now we come to section 22.

Mr. IRWIN: Clause 22 imposes a special 5 per cent tax on increased dividends paid by a company that does not have a degree of Canadian ownership in the period between budget date and the beginning of 1965.

The CHAIRMAN: Yes, and there is a formula here to determine what the increase is?

Mr. IRWIN: Yes. This is necessary to determine the amount of the increase and this is done by establishing a base period and looking at the amount of dividends paid in that base period, subject to certain adjustments.

The CHAIRMAN: I have marked this section to stand.

Senator MCCUTCHEON: Mr. Chairman, I think sections 22 to 26 should stand.

The CHAIRMAN: Yes, but in the meantime it might be helpful to senators to have an explanation from Mr. Irwin but I will mark the sections to stand for the minister.

Senator THORVALDSON: Mr. Irwin, I take it that this is simply to prevent corporations that may be subject to the legislation from paying out all their surplus as dividends before January 1965, in order to take advantage of the lower tax rate?

Mr. IRWIN: That is right. Having increased the rate of tax on dividends, to come into effect in 1965, the Government felt it must put on a special tax to discourage companies paying dividends out at the lower rate.

Senator THORVALDSON: And the amount of the special tax is 5 per cent of excess dividends over that base period?

Mr. IRWIN: There is a certain base amount established, as I mentioned, and one calculation of that base amount is 5/4ths of the dividends paid in the base period. The purpose of course is to allow companies some leeway to increase dividends or to carry on existing dividend policies. There is another calculation of the base which is based on paid-up capital on budget date and this is an alternative that is of greatest assistance to newly-formed companies.

The CHAIRMAN: That would help companies that have not up to this moment paid a dividend.

Then that section stands.

Now, section 23.

Mr. IRWIN: Section 23 makes a number of changes in the non-resident withholding tax. The first of these provides that in future a management or administration fee or charge paid to a non-resident shall be subject to the non-resident withholding tax of 15 per cent.

The CHAIRMAN: I was going to say, in conjunction with that, honourable senators should look at page 21 at (1c).

Senator THORVALDSON: Before you go to that, Mr. Chairman, I wonder if I might ask about the reverse situation where there might be a management fee coming from the United States to Canada. Are such fees subject to withholding tax by the United States Government? I speak, namely, of the complete reverse situation of what is contemplated by this section.

Mr. IRWIN: I could not answer that question completely, sir. The United States non-resident withholding tax is generally much broader in its scope than the Canadian. The Canadian non-resident withholding tax applies to four or five specific kinds of income. The United States tax applies to income derived from sources within the United States by non-residents. It is my opinion that they do not impose a tax upon management fees, but I could not be too definite about that.

Senator McCUTCHEON: I am looking at the tax convention. It seems to me this matter is already covered up to a point in the tax convention. I wonder what the effect of this is going to be. The tax convention, article IV, says:

> When a United States enterprise, by reason of its participation in the management or capital of a Canadian enterprise, makes or imposes on the latter—

That is, on the Canadian enterprise—

> in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which should normally have appeared in the balance sheet of the Canadian enterprise but which have been, in this manner, diverted to the United States enterprise, may be incorporated in the taxable profits of the Canadian enterprise, subject to applicable measures of appeal.

Surely the intent of the convention is that otherwise the management fees are proper, then they are to pass without tax, be allowed as a deduction by the Canadian company and passed to the United States resident without any Canadian tax.

The CHAIRMAN: Under the exemption on page 21 to which I referred you, (1c), if you look at item (*b*) you see it says that for the purpose of this paragraph we have been talking about—the "management or administration fee or charge" does not include—

Then, in (*b*):

> a specific expense incurred by the non-resident person for the performance of a service that was for the benefit of the payer.

which means that a parent company in the United States could perform specific services which are for the benefit of the Canadian subsidiary and they would be proper expenses and they would not be subject to this withholding tax.

Senator McCUTCHEON: Then what is the purpose of the withholding tax? Surely from the revenue point of view we are better off to put ourselves in a position where we can charge it back to the corporation. If it is improper, we will probably get a higher rate of tax.

The CHAIRMAN: If it is improper—and if it is improper it would not qualify here as an exemption.

Senator McCUTCHEON: You are saying "If it is improper"—

The CHAIRMAN: If there is authority in the convention. The bill says we are going to levy a withholding tax on moneys that go out for management fees unless they fall within this category of exemption.

Mr. IRWIN: That is right, Mr. Chairman. The treaty, I think, gives both countries power to correct accounts.

Senator McCUTCHEON: That is right.

Mr. IRWIN: That is, accounts of subsidiary companies or branches. The proposal here is to put a tax on a payment which is a management or administration fee or charge and which is paid to a non-resident. One might take the analogy of interest. Interest is deductible by the Canadian subsidiary in Canada, but when it is paid to a non-resident it may nevertheless be subject to non-resident withholding tax.

As the chairman has pointed out, the words "management or administration fee or charge" are substantially modified and explained on page 21.

The minister, in explaining this tax, tried to make it clear that all that was intended here was that the non-resident withholding tax should apply to payments which more properly should be labelled "dividends" but are passing from the Canadian subsidiary to its parent company under another name.

The CHAIRMAN: What I understand in Senator McCutcheon's point is that under the article there is power for, say Canada, for instance, to say that payment is not really payment for management fees, it is a method of extracting money by that route rather than by the dividend route. The convention gives both countries the right to say "When we find a payment of that character we can treat it as though it is part of the income of the Canadian company paying, and therefore they can pay corporation tax on it."

Senator HUGESSEN: What article of the convention is that?

Senator MCCUTCHEON: Article IV.

The CHAIRMAN: And the corporate rate of course is much higher than the 15 per cent.

Senator BOUFFARD: You must have contracts that have been in existence between a Canadian company and a parent company in the United States, where a management fee has been in existence for years. If it is not taken out as a dividend, is it taxable?

Senator HUGESSEN: It is probably covered under (1c), if it is the ordinary fee he paid for years, and the ordinary services.

Senator THORVALDSON: It is at (1c) about one-third of the way down page 21.

The CHAIRMAN: All that strikes me is that under the article in the United States-Canadian convention you could, with certain types of these management fees, collect the full corporate rate of tax that was paid out in that guise, whereas when this becomes effective there would be the 15 per cent withholding. I am just wondering—it is not the corporate rate, plus 15 per cent, I hope.

Senator MCCUTCHEON: I am wondering whether this convention overrides any subsequent tax changes except in so far as the dividend and interest withholding tax are concerned.

The CHAIRMAN: That is right. No one would complain if the effect of this bill were to reduce the obligation under article IV of the convention.

Senator MCCUTCHEON: It might be a means of increasing it. It might be added back and charge the withholding tax.

The CHAIRMAN: There is that risk. Possibly you could tell us what is intended, Mr. Irwin?

Mr. IRWIN: I am not sure it is intended to catch it twice, in the sense you are suggesting. The intent of this, as has been explained by the Minister of Finance, is to guard against the extraction of profits under the heading of management fees, when they should more properly go out as dividends and be subject to the non-resident withholding tax.

The CHAIRMAN: I think we shall have to leave this for an explanation by the minister. Are you agreeable?

Hon. SENATORS: Agreed.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, may I ask the witness one question? Does he know whether the American law provides for the kind of policing that is obviously implied in (1c). I take it that as a result of this there will be a great deal more careful examination by the tax board into these management fees. Does the American law provide for similar arrangements?

Mr. HARMER: I do not know what the American law is, Senator Connolly; but I do know that the American internal revenue service has been showing a great deal of interest in this subject, and I presume they are moving within the powers of their law.

Senator McCUTCHEON: They claim that their parent companies are conferring benefit on their subsidiaries and they are not getting enough of it.

The CHAIRMAN: That is right. That is the other side of the coin. They say they are giving away too much benefit for too little money.

Senator HUGESSEN: It seems to me that (1c) is just a paraphrase of the convention now.

The CHAIRMAN: That is right, and that is why I have difficulty in trying to correlate the whole thing, as to what is intended. I think we should stand this for the minister.

Senator McCUTCHEON: May I revert, for purposes of information, to the previous clause 105D, which deals with the special 5 per cent tax where dividends increased over a base period, are paid by the corporation which does not have a degree of Canadian ownership. When you go to the subsequent section about withholding tax, you find provisions for the excess of withholding tax, if I may use that term, subsequently being remitted if a corporation assumes respectability by the year 1966 by acquiring a degree of Canadian ownership. There does not seem to be any similar relieving provision here. Is that by design?

Mr. IRWIN: Yes.

Senator McCUTCHEON: May I ask why?

Mr. IRWIN: This, of course, is getting into a matter of Government policy.

Senator McCUTCHEON: I do not see any difference between that and administration.

Mr. IRWIN: The situations are a little bit different. The refund of the non-resident withholding tax where a company acquires a degree of Canadian ownership is paid to the non-resident who is the person who has within his control the relinquishment of the degree of ownership in the Canadian company. He is the person who can be influenced by the 10 or 20 per cent rate. The special 5 per cent tax is very carefully drafted to be a tax on the company in Canada, and it is the company, at least in theory, which decides whether it is going to increase its dividends or not, and therefore it is the company that becomes subject to the penalty, if it does increase its dividends. If the section provided that a refund of the tax would be made in some future years, presumably it would have to be made to the company that pays the tax, and this would be rewarding the company for some action taken by its non-resident shareholders.

The CHAIRMAN: Actually, I suppose you might call this a penalty for overreaching.

Senator McCUTCHEON: Oh, no, Mr. Chairman. Established companies, successful companies, increase their dividends progressively as they go. Here is an American parent who says it is going to try to get this degree of respectability for its subsidiary, but it has a few years to do it. In the meantime the subsidiary's earnings are going up. The parent says, "Why should I not exceed the dividends, my subsidiary will pay the penalty now; but if I achieve that result, then surely the penalty should be remitted."

The CHAIRMAN: There is a difference between remitting the penalty and making a refund of the withholding tax, in certain circumstances. This is levied as a penalty, not an additional tax, as I understand it.

Senator McCUTCHEON: That is even worse.

Mr. IRWIN: Either a penalty or a form of deterrent.

Senator McCUTCHEON: What are the official views, in so far as they are not treading on policy. What happens to the new company that comes into

Canada, starts to earn money then starts to pay dividends to its foreign parent, if it comes in after June 13, 1963.

The CHAIRMAN: They can pay 5 per cent on the paid-up capital to avoid that difficulty, as provided on page 18 of the bill.

Senator McCUTCHEON: I am sorry, I missed that.

Senator CAMPBELL: May I raise a question, which is one of interpretation, regarding the credit provision which is applied to a company when it has obtained the requirement of a degree of Canadian ownership. I refer to page 21, clause (d).

The CHAIRMAN: We have not come to that yet. We have just dealt with management fees.

Senator McCUTCHEON: May I raise one other question, Mr. Chairman, referring again to section 105D. Supposing we have company "A", which is a foreign company. It has company "B" a Canadian resident company, but without a degree of Canadian ownership, as a subsidiary. It in turn has company "C", which is a Canadian resident company without a degree of Canadian ownership—because while it may be wholly-owned by a Canadian company, that company in turn has not a degree of Canadian ownership—

The CHAIRMAN: That comes in the next couple of pages, but it is a good question.

Senator McCUTCHEON: Is there not a possibility of the 5 per cent tax being exacted twice?

The CHAIRMAN: Not a possibility. I should say it is there.

Senator McCUTCHEON: Well, it should not be there.

The CHAIRMAN: We will come to it when the minister is here.

Now, on page 19, subparagraph (2) of this clause. I think we can pass that item, which simply deals with certificate of exemption of 15 per cent withholding tax for certain types of companies.

Senator McCUTCHEON: I am willing to have it carried subject to my right to discuss it with the minister. We need foreign investment in this country, and will continue to need it, I believe. That is the very type of corporation that should be encouraged to invest in equities, because it never exercises any control, it takes no interest in management; it is a pure investor.

The CHAIRMAN: We will stand that, too, subject to your point that it should be broadened to include dividends.

Senator McCUTCHEON: Yes.

Senator THORVALDSON: This refers to United States' funds taxable in the United States?

Senator McCUTCHEON: That is right.

Senator THORVALDSON: That is what the section refers to?

Mr. IRWIN: On new issues.

The CHAIRMAN: Going to subsection (3), this is where the 15 and 20 per cent and 10 per cent rates come in.

Mr. IRWIN: This provides for a reduction of the non-resident withholding tax to 10 per cent starting June 14, 1963 when the dividends are paid by a company that has a degree of Canadian ownership, and it provides for an increase in the rate of this non-resident withholding tax to 20 per cent commencing January 1, 1965 for dividends paid by a company that does not have a degree of Canadian ownership.

The CHAIRMAN: This whole clause stands. Now, you did have a question, Senator Campbell?

Senator CAMPBELL: Yes. Probably Mr. Irwin can help us a bit. If you look at page 20 and at clause (1b) which covers a company that for its first taxation year commencing after 1966 has a degree of Canadian ownership, and then you turn to (*d*) of the same clause where you get the credit—"10 per cent thereof, if the amount was so paid or credited after December 31, 1964 and before January 1, 1967, and an amount equal to 20 per cent of that amount has been deducted . . ."

Now, I raise the question: Supposing that the corporation's year does not coincide with the end of the year but it starts, say, six months after January 1, 1967, and dividends are paid in that period, but it has prior to 1967 fulfilled all the conditions of the requirements for the degree of Canadian ownership. In that case they would not be entitled to the credit, would they? It all arises as a result of the first taxation year of the corporation commencing after 1966. It ties in with the other sections. It must be credited before January 1, 1967. If I am correct, a strict interpretation of those clauses would mean that no credit will be allowed with respect to the dividends paid after December 1, 1966 and before the commencement of the corporation's taxation year.

Mr. IRWIN: If I understood your example correctly, Senator, you said that the company would qualify as one having a degree of Canadian ownership some time before 1966. As soon as it so qualifies the dividends it pays become taxable at 10 per cent, and not 20 per cent.

Senator CAMPBELL: It is the credit I am thinking of.

Mr. IRWIN: There would not be a credit in respect of dividends where the tax was only 10 per cent.

Senator CAMPBELL: But having paid the 20 per cent in that prior period, and then having qualified within the required period of time, they then apply and get back the 10 per cent credit. Is that not correct?

Mr. IRWIN: They get back the difference between the 20 per cent rate and 15 per cent, or 10 per cent.

Senator CAMPBELL: Yes, whichever it may be.

Mr. IRWIN: Yes.

Senator CAMPBELL: Well, now, if their taxation year commences after 1966—

Mr. IRWIN: Let us say—

Senator CAMPBELL: Let us say in June 1967—

Senator MCCUTCHEON: It gets no refund on amounts paid between January 1, 1967 and June 1, 1967. That is quite obvious.

Senator CAMPBELL: Yes. Why shouldn't they?

Senator MCCUTCHEON. They should.

Mr. IRWIN: But when did this company qualify as one with a degree of Canadian ownership?

Senator CAMPBELL: It qualified, say, at the end of 1966.

Mr. IRWIN: It qualified for its year which began in 1966?

Senator MCCUTCHEON: It does not have to qualify until 1967 because it has to quality in the first taxation year commencing after 1966. That taxation year might run through to June 1968.

Senator CAMPBELL: I think there is some doubt about the interpretation of this.

Mr. IRWIN: Yes. If I was following Senator Campbell's example correctly, I understood him to say it would qualify in 1966. My understanding is that as soon as it qualifies then its dividends pay 10 per cent, and there

is no need for a refund. But, you are suggesting in this example it might qualify for the year which commences in 1967 and might have paid some dividends between the first of the year and—

The CHAIRMAN: —and the end of its taxation year.

Senator McCUTCHEON: That is right. I think there is a hiatus there.

The CHAIRMAN: Have you made a note of that for our conference with the minister, Senator Campbell? Will you make a note of it, Mr. Irwin?

There is the question you raised, Senator McCutcheon. There is the possibility here, Mr. Irwin, that in the facts as stated by Senator McCutcheon—that is, if you had a Canadian company, a wholly-owned subsidiary of an American company, and then that Canadian company had a wholly-owned subsidiary—if the wholly-owned subsidiary of the Canadian company passed a dividend to its parent there would be a tax at the 15 per cent rate.

Mr. HARMER: Not if they are both in Canada.

Senator McCUTCHEON: No, the example was this, Mr. Chairman—

The CHAIRMAN: Then, I missed your point.

Senator McCUTCHEON: You have a United States company, and it has a wholly-owned subsidiary in Canada. Let us assume that that subsidiary, for the sake of simplicity, is merely a holding company. That subsidiary derives all its income from another Canadian subsidiary which is an operating company. Now, as I read this, if company C, the operating company, or the lowest one on the totem pole, increases its dividend rate—it gets out of the exemptions of section 105 (d) if you can call that 5 per cent an exemption—and then it pays that dividend to a Canadian resident corporation, but it still will be charged a 5 per cent tax, and then that holding company which is put there for any purpose you may like in turn passes on an increased dividend to its parent, it, in turn, pays the 5 per cent tax, and, of course, withholding tax is also levied on that last payment. Surely, no matter what the degree of control is there should be no special tax on dividends passing between two Canadian resident corporations. That is the situation you have here.

The CHAIRMAN: Have you any comment?

Mr. IRWIN: Only this, that it was very important in the mind of the Government that this tax had none of the characteristics of a non-resident withholding tax. Therefore, it was applied when a company paid an increased dividend.

Senator McCUTCHEON: Even though it paid the increased dividend to another Canadian company?

Mr. IRWIN: Yes, sir, it applies without regard to the recipient. If the law should say this applied only after the dividend ultimately goes to a non-resident then it has some of the characteristics of a non-resident withholding tax.

Senator McCUTCHEON: Surely not. The tax is imposed on the Canadian company that pays the increased dividend to a non-resident, it itself being a company without a degree of Canadian ownership.

The CHAIRMAN: The explanation is—because I have had it given to me before, having raised the question—that you have to make this look not like a withholding tax.

Senator McCUTCHEON: The only way you can make it look not like a withholding tax is to run the risk of double taxation.

The CHAIRMAN: My own view, for what it is worth, is that I do not think it is necesary to put a 5 per cent penalty on the second Canadian subsidiary if it passes an increased dividend to its own parent in Canada.

Senator McCUTCHEON: That is right. That is my point.

The CHAIRMAN: That money is not going out of Canada. The penalty is when it does go to the United States, and the withholding tax applies, and the 5 per cent penalty is assessed against the company.

Senator McCUTCHEON: That is right. But here it can be assessed twice.

The CHAIRMAN: The bill does assess it twice, and the explanation is that they want to make this look like anything else but a withholding tax. If you call it a penalty and you say, "If you dare to pay out more than five-fourths than what you have been paying out in this period, or you pay 5 per cent more on capital if you had not paid anything before then the penalty against the company is 5 per cent". It does not affect the amount of withholding tax they pay on top of that.

Senator McCUTCHEON: Not at all.

The CHAIRMAN: They are two separate things.

Senator McCUTCHEON: I do not think it will fool the negotiators in Washington when we come to renegotiate the treaty.

The CHAIRMAN: However, it may be an exercise—as Senator Croll has now adopted the expression—an exercise in a vacuum, because in this subsidiary parent Canadian company relationship they may be smart enough to fix a base amount that will not attract that tax.

Senator McCUTCHEON: I am not saying it cannot be avoided. Most of the impact of this can be avoided.

Senator HUGESSEN: Which section provides this 5 per cent payable on dividends of a Canadian company which does not have a degree of Canadian ownership?

Mr. IRWIN: It is a part of the new Part IID imposed by Clause 22. The tax that is imposed is on any company resident in Canada that increases its dividend over a certain base amount.

The CHAIRMAN: And did not have a degree of Canadian ownership?

Mr. IRWIN: Yes, and did not have a degree of Canadian ownership.

Senator HUGESSEN: In the case we have been given the subsidiary Canadian company has a degree of Canadian ownership?

Mr. IRWIN: Not as I understand it. The company Senator McCutcheon is referring to would be one that would not qualify as having a degree of Canadian ownership. It would be a subsidiary of another company resident in Canada that did not have a degree of Canadian ownership.

Senator HUGESSEN: Where is that provided for in the bill?

Senator McCUTCHEON: You have to look at the definition of "degree of Canadian ownership".

The CHAIRMAN: We will come to that later.

Senator HUGESSEN: I see.

The CHAIRMAN: That takes us through clause 23, all of which stands. Clause 24, on page 22.

Senator McCUTCHEON: That principle is the same.

Mr. IRWIN: Clause 24 provides that the special tax imposed on the adjusted branch profits of a non-resident company carrying on business in Canada shall be increased from 15 per cent to 20 per cent. This is to keep this tax in conformity with the proposed increase to 20 per cent in the rate of tax on dividends paid by a company that does not have a degree of Canadian ownership after 1964.

Senator McCUTCHEON: This is to stand. You would not have raised it 20 per cent if you had not raised the withholding tax.

The CHAIRMAN: There is nothing in the section itself which requires any particular discussion, but it is just part of the general plan.

Senator HUGESSEN: Stand.

The CHAIRMAN: Clause 25. This is simply requiring a certain marking on coupons?

Mr. IRWIN: That is right.

Senator THORVALDSON: What is the purpose of that?

The CHAIRMAN: These are bonds that under clause 23 were exempt from withholding tax.

Senator THORVALDSON: That is the exemption provided for pension funds in the United States?

Mr. IRWIN: For exempt non-resident persons. It is now necessary to distinguish between bonds issued before budget date and after that date.

The CHAIRMAN: Clause 26.

Mr. IRWIN: Clause 26 provides two amendments. The first one deals with what is commonly known as dividend stripping; and the second, associated companies.

The first part of the amendment provides that the minister shall have power to make a direction that if a series of transactions result in assets disappearing from a company and passing into the hands of individual shareholders in a way that would otherwise avoid income tax—he may direct that the amount shall be included in the income of the recipient, whether an individual or a company.

The CHAIRMAN: I think the only purpose now is to just understand what the section does, because I believe you want to have some discussion with the minister on ministerial discretion.

Senator McCUTCHEON: That is right.

Senator THORVALDSON: Might I just ask one question of Mr. Irwin? Did you find it completely impossible to draft amendments which would cover this situation, which we are all aware of and which I agree should be cured—namely, with regard to dividend stripping and the abuses that have occurred in connection with associated companies? Did you find it impossible to draft legislation that would cover these so-called loopholes without the necessity of employing the doctrine of ministerial discretion in the act?

Mr. IRWIN: Yes, I think the answer must be "yes". Past amendments, to deal with dividend stripping, have not been too successful. Ways have been found around them, and this seemed to be the only way this could be dealt with. As the minister explained, in the case of dividend stripping, this is regarded as an experiment and as something which we hope will be of short duration.

Senator THORVALDSON: That would imply, then, that perhaps at some later time we can expect to be able to draft legislation which would cover the situation without the minister having these powers?

Mr. IRWIN: Yes, I think the minister is hopeful that it may be possible to devise new methods to deal with the undistributed profits of corporations. He has mentioned that he hopes to get advice and findings from the royal commission which will be of help in dealing with this problem. This is one that has been with Government for a long time; it is a very difficult problem.

The CHAIRMAN: We have quite a number of statutory dividend stripping sections were you are permitted to do the stripping on payment of 15 per cent, in some cases, and 20 per cent, in other cases?

Mr. IRWIN: Yes, the law has provided for a number of years that corporations could pay 15 per cent or 20 per cent on undistributed income.

Senator MCCUTCHEON: Will this discretion override that?

Mr. IRWIN: It does not remove those methods. They are still open to taxpayers.

The CHAIRMAN: I think Senator McCutcheon's question was: Is this power so embracing that this section could be made to apply with a higher rate of income tax than when you had tried to take advantage of some of the other sections at 15 per cent? In other words, is this so broad that the minister can impose a higher rate of tax by exposing you to the general rate of tax?

Mr. IRWIN: I can only say what I think is the intention here. It is my view that if a corporation wants to take advantage of any of the existing provisions under which it could pay 15 or 20 per cent on undistributed income, it is quite free to do so. I personally would be very surprised if the Minister of National Revenue then said that we must treat this as income, as if this section which permits the payment of 15 per cent or 20 per cent tax did not exist.

The CHAIRMAN: Strange things develop in the course of administration after a bill becomes law, and the way in which you read the language afterwards and apply it, and it is not necessarily the way you think it is going to work out.

Senator MCCUTCHEON: I take it this is directed at legal transactions, is that right?

Mr. IRWIN: Yes, sir.

Senator THORVALDSON: Do you mean transactions that are now legal, that have been found legal?

The CHAIRMAN: Yes.

Senator CONNOLLY (*Ottawa West*): Suppose some company has taken advantage of section 105, pays 15 per cent, and in the normal way issues redeemable shares and then redeems, does that mean each one of these is going to be subject to a ministerial discretion as to whether it is proper or not?

The CHAIRMAN: Well, the language is such that it could be. As you will notice one of the tests is "to avoid tax or substantially reduce tax."

Senator CONNOLLY (*Ottawa West*): If the reason for 105 is to avoid or reduce tax, as Senator McCutcheon says, are you going to police things that are otherwise legal by some clauses like this? I wonder then, if that is to be the case, what degree of security one can feel if it is decided to take advantage of 105?

Senator MCCUTCHEON: I know of a large Canadian industrial company which from the point of view of its dividend record is in a position to capitalize its entire surplus and pay it out. Possibly it could capitalize a bigger surplus if it had one. If it does so under section 105 what happens to me when it comes to the question of tax on that?

Mr. HARMER: I don't think you need have any fear of that, Senator.

Senator CONNOLLY (*Ottawa West*): Why shouldn't one be afraid?

Mr. HARMER: I think it has been made pretty clear by the minister what the purpose of this section is. I would be surprised if any minister given this kind of power would apply it in the way suggested.

Senator MCCUTCHEON: I don't want to enter into a debate on this, but it was made quite clear by the minister to whom you are referring that the discretions would be applied by another minister.

Senator CAMPBELL: Would it not be simple to add a clause amending this which would make it clear?

The CHAIRMAN: Yes, you could add another clause (*a*), (*b*) or (*c*), which would make it clear.

Senator CONNOLLY (*Ottawa West*): It may be necessary for the minister to have discretion. The witness seems to think there are considerable transactions that no one wants to see going through. But surely in a legitimate 105 operation this should not apply. Mr. Harmer says it is not intended that 105 should interfere with this. Perhaps the section should say so.

The CHAIRMAN: If you put a rate of tax in this section, and the minister decides it is subject to a certain rate, then at least you have limited your liability. And I would say if you put the same rate of tax that you would have to pay under 105 on some other occasions, then you have not made it attractive for anybody to manœuvre.

Senator HUGESSEN: I would have thought section 105 was well covered in the section as it now stands because at line 25 it says:

> ...in consequence of any distribution of income of a corporation has been or will be avoided,

The CHAIRMAN: That is right.

Senator HUGESSEN: If a corporation goes under section 105 and pays 15 per cent of its surplus there is no avoidance of tax under the act.

Senator MCCUTCHEON: I would be much happier if it said so specifically.

Mr. IRWIN: We thought it did.

Senator THORVALDSON: May I ask this question of Mr. Irwin? He may feel it fringes on a Government policy more than income tax administration. Sometimes I wonder if this discretion is to be there for a temporary period whether consideration should be given to handling such matters through section 138 which gives wide powers to the Treasury Board.

The CHAIRMAN: Senator Thorvaldson, if you read section 138 I think you would realize very quickly while it may be a sound deterrent the Treasury Board would have quite a time trying to proceed under it.

Senator THORVALDSON: Probably, but I have often wondered why there was no attempt made to use it having regard to some of these dividend stripping operations.

The CHAIRMAN: There may be an improper way that does not have to be illegal.

Senator MCCUTCHEON: Surely the minister would not be concerned if he did not consider it improper.

The CHAIRMAN: In this case it would not be the minister, it would be the Treasury Board.

Senator MCCUTCHEON: But surely the minister has some influence with the Treasury Board.

The CHAIRMAN: I have heard of cases where ministers have had certain difficulties with the Treasury Board.

Senator THORVALDSON: I think the words used in section 138, "in the proper avoidance of reduction of taxes", that is at the fourth line, "that might otherwise have become payable under this Act,"—

Senator HUGESSEN: It does not say "improper avoidance" in this section.

Senator THORVALDSON: I thought I heard that mentioned.

The CHAIRMAN: The findings of fact involved in determining improper avoidance would, I think, be pretty terrifying.

Senator HUGESSEN: I think the whole purpose of this is to govern transactions which would otherwise be perfectly legal.

Senator CRERAR: As there seems to be a certain amount of conflict on this point, I would like to ask this gentleman to give a definition of dividend stripping. What is dividend stripping?

Mr. IRWIN: It is briefly this; as you know, dividends, when paid by a company to an individual, are taxable income of the individual. Dividend stripping is arranging affairs so that the individual gets the income from a company in a form that is not taxable when it reaches his hands.

Senator CRERAR: Would that apply to companies taking advantage of section 105?

Mr. IRWIN: No, sir. The law provides in section 105 that a company may pay 15 per cent or 20 per cent on its undistributed income and that becomes "tax paid distributed income" and individuals are not taxed when they receive payments out of "tax paid undistributed income".

Senator MCCUTCHEON: What happens when payments are made of cash substantially redeemed from surplus?

The CHAIRMAN: Under the Companies Act where you can set aside a certain amount of surplus to be redeemed the company pays.

Senator MCCUTCHEON: Can you give us an example of what the minister is trying to get at without giving us any names?

Mr. IRWIN: An example of dividend stripping?

Senator MCCUTCHEON: An example of the vices you are setting out to attack here. Don't give us too many details or it might give people ideas.

The CHAIRMAN: I have a whole list of what has been tried.

Mr. IRWIN: I can think of one which I probably will not describe too accurately. If an individual is the main shareholder of a company which has a lot of undistributed income on hand, and he knows if he has the company pay a dividend this will be subject to tax at graduated personal rates which might be quite high, he might then decide to sell all the shares in that company to a dealer in securities at a price which covered this undistributed income, and thus he gets cash for what might otherwise be received as a dividend. The dealer in securities then has control of the company. He might have borrowed the money to finance this purchase of shares. He would then get a dividend from the company which he now controls to reimburse him for the money he has borrowed.

The law at present says a tax shall apply in that circumstance equal to 20 per cent on the dividends. But people have begun to look for devices whereby this may be done without the dealer in securities acquiring control. I understand that the shares of the company we are looking at would probably be changed to Class A and Class B, one class with voting power and the other without. Those shares which did not have voting power would comprise the great majority of the shares and so arrangements could be made so that this transaction could be carried out and the dealer in securities would not acquire control, and therefore the present provision of the law which would mean a 20 per cent tax did not come into effect.

Senator CRERAR: This all sounds like a contest between the tax lawyers and the legal minds of the department.

Senator CROLL: Mr. Chairman, in connection with subsection (2) of section 26 of the bill, associated corporations.

What is intended by that? What have you in mind particularly, Mr. Irwin?

Mr. IRWIN: The problem that is faced here of course is that the law provides that the first $35,000 of a company's taxable income shall be taxed at a lower rate, 21 per cent as compared with 50 per cent. Therefore there is a great inducement to split a company into a number of small companies each of which

has about $35,000 taxable income. The law has a few pages of complicated law to deal with this situation and to require that only one of a group of companies shall be eligible for this lower rate on the first $35,000 of taxable income. However, even those pages of complicated law have not served to deal with all the possibilities, so the Government felt that it was necessary to give the Minister of National Revenue authority to look through some of these devices and say that only one of a group of companies would be eligible for this lower rate on the first $35,000.

Senator CROLL: Let me give you an example: Say corporation A, corporation B and corporation C, all owned by separate individuals, no common shares, nothing in common, they are separate individuals, not even related—not brothers, cousins or anything else. They form a partnership to go into business or for making an investment. Now, under the act, the minister may very well say that they are associated companies.

Senator MCCUTCHEON: The point you are trying to make is that this is a joint venture?

Senator CROLL: I am not talking about a joint venture deal.

The CHAIRMAN: You can have corporate partnerships.

Mr. IRWIN: I am not sure I understand the form of this partnership.

Senator CROLL: The form of the partnership is to undertake some other business or an investment. They each contribute, say, $50,000 to make a loan to another corporation or they go into a joint venture of some other kind.

Mr. HARMER: Is this new venture a new corporation?

Senator CROLL: Yes.

Mr. HARMER: And your problem is whether this new corporation will be considered to be related to each of the old ones?

Senator CROLL: Associated, yes.

Senator MCCUTCHEON: You might say that this company could be one of the corporations we reported out of here yesterday, a corporation formed to engage in mortage insurance. The investment company that is to be incorporated in connection with it would be recognized as a joint venture and related to all the other insurance companies in Canada.

The CHAIRMAN: Oh, no.

Senator CROLL: What do you think, Mr. Irwin?

Mr. IRWIN: It seems to me if they merely come together to co-operate or form a partnership they would not have destroyed their separate entities, but if they form a new corporation and become shareholders in a new corporation the situation might be changed.

Senator CAMPBELL: Mr. Chairman, following along Senator Croll's question, I think I know what he has in mind. If you have three corporations that are not in any way related but carrying on a separate and distinct business, and no common shareholdings in it, and then those three associated together in a joint venture, say to drill an oil well or charter a vessel, which is a common thing to do on a joint basis, is the language of the bill, referring to associated companies, sufficient to say that only one of those companies or two of them can get the lower tax rate on the first $35,000 of taxable income.

The CHAIRMAN: I would not think the wording covers that situation.

Senator CAMPBELL: I would not think so but Senator Croll raised that very interesting question.

The CHAIRMAN: It might cover the case where I have a manufacturing business and some person else has a selling agency and I make a contract with

him to be my selling agent for the goods that I manufacture. The question then arises in those circumstances, is the purpose in doing that so that the selling agency will get the benefit of the lower tax on the first $35,000 and the manufacturing company may get a lower rate on its $35,000. Relationship is not a test here. It is a question of association.

Senator CROLL: I was very glad to have your opinion, Mr. Chairman, and Senator Campbell's, but I did not hear very much from the front bench. It is the thinking I ask for, I am not asking for an opinion. What is the thinking?

Mr. HARMER: As far as I am concerned the thinking would not be such as to lead the minister to make a direction in the case that you cited. I think it would be possible for him to do so if he reasonably finds a separate existence of the corporation was not solely for the purpose of carrying out the business in the most effective manner and if he could find one of the main reasons for the separate existence was to reduce the amount of tax. If he could do both those things and he could satisfy a court that that is so . . .

Senator THORVALDSON: Of course, the purpose always is to reduce the amount of tax.

Senator CROLL: Is the test the reducing of the amount of tax?

The CHAIRMAN: That is one of the main tests.

Senator THORVALDSON: Which of course is completely legitimate as long as it is done within the law.

Senator CONNOLLY (*Ottawa West*): This provision would have the effect of taxing a partnership apart from looking at the profits that are paid from that partnership to the individual corporate persons. Wouldn't that be the practical effect of it?

The CHAIRMAN: Can you assume that because three companies get together and form a partnership that the partnership is a company? A partnership is a partnership, it is not incorporated. The members of it happen to be corporate instead of individuals and I should think that kind of case would be an easy one to defend against any application of this section.

Senator HUGESSEN: If you had three corporations joined together in a venture quite apart from their own separate businesses, and formed a fourth company for a particular purpose, surely the test is, are they carrying out the business in the most effective manner? An I should think the answer is yes.

The CHAIRMAN: They are divorcing it from their other interests.

Senator MCCUTCHEON: The devil himself knoweth not the mind of man.

The CHAIRMAN: Shall section 26 stand?

Agreed.

The CHAIRMAN: We have already dealt with section 27, and now we come to clause 28. Clause 28 deals with the determination of degree of Canadian ownership.

Senator THORVALDSON: That is really just a definition clause.

The CHAIRMAN: That is a definition clause. Is there anything we want to ask, or do we just stand this?

Senator MCCUTCHEON: I would like to ask one point on the question of drafting, Mr. Chairman. A point came up to some extent from some of the witnesses yesterday, where they were referring to shares of corporations having full voting rights under all circumstances, all the shares continuing to be listed on a recognized stock exchange. I am looking at 139A(1) (*a*) (ii) (A). I am thinking of the situation which I am told in certain provincial jurisdictions is fairly common. This of course does not affect the withholding tax. This merely would affect their rights to special depreciation as given by the regulations for

new construction or new machinery over the next few years. You have a situation where the common shares of the company are divided into classes, let us say five equal classes. Let us say there are ten directors. Each of those classes of shares is on the same basis as regards dividends, as regards winding up, distribution, and so on. But class A elects two directors as a class, Class B elects two directors as a class, and so on.

My suggestion is that you are trying to take away the benefits of the special depreciation from such a company, but by having used these words:

...having full voting rights under all circumstances...

you have. Because class A shares have not full voting rights under all circumstances.

They have full voting rights under everything except to vote for the directors under class B.

The CHAIRMAN: There is no class there.

Senator MCCUTCHEON: There is no class of shares which have full voting rights under all circumstances. I could give a specific example of a company in that position, all of whose shares are owned by Canadians.

There is no question of any test at all. The shares of course are not listed. It would not make any difference in my view whether they were listed or not. They still could not meet the test.

That seems to me to be a matter of draftsmanship and I wonder if the officials would take it under consideration. Possibly when the minister is here and the officials are back with him, they could make some suggestion just on that point.

I am not going to talk about the balance of the principle in section 139A at all.

Would you do that, Mr. Irwin?

Mr. IRWIN: Certainly.

Senator MCCUTCHEON: The minister, I may say, is familiar with this situation. I think you will find correspondence.

Mr. IRWIN: Yes, we have heard of this.

Senator MCCUTCHEON: It is just an oversight, I think.

Senator THORVALDSON: Also having reference to this problem are the briefs presented by those two gentlemen yesterday—one from Petrofina and the other from some other company. Does not that relate to the same situation?

The CHAIRMAN: It is in the same clause in the bill, but it is a different paragraph. That comes under (B) while Senator McCutcheon was dealing with a case under (A).

Senator CROLL: May I make a suggestion. Our next sitting is on Tuesday. It would be most helpful to us, if it were possible for us to have today's record before us by then. I do not know whether that is possible. If you could possibly have it as a special order, so that we could have a copy, or have it back here earlier, to have it back here before, so that we can look at it, and also so that the minister can look at it.

The CHAIRMAN: Yes. I was about to suggest to our committee that the Hansard report of our proceedings be published in one volume, but I will not suggest that now. We would like to get for next Tuesday the discussion that went on today.

Senator CROLL: Exactly.

The CHAIRMAN: I would like to have the whole discussion, if possible.

Senator CROLL: Perhaps that is possible, because the other one has been there for some time. Is that conceivably possible?

The CHAIRMAN: We have to consult with the printers, but we will do that and tell you later today. Would that be all right?

Senator CROLL: We can leave it to you to do the best you can. It would be helpful when we discuss it. Otherwise we would have references to "I said this and I said that". We have had some very useful information here today.

Senator WOODROW: May I ask a question. On the opening question, the clauses of the discussion, clauses 1 and 2, referring to group life insurance, the discussion was quite broad and there was quite a bit of information we had here at the time, as to how it affected different companies. I just ask if a list that you are preparing for the minister could include this subject, so that he might be prepared to deal with it.

The CHAIRMAN: I do not know what the point is.

Senator WOODROW: You have heard it.

The CHAIRMAN: No, no.

Senator WOODROW: Senator Campbell spoke about it—what forms of insurance are taxable, and what are not.

The CHAIRMAN: No, no, you have misunderstood me. What I ask is, what is the point on which you want to get some information.

Senator WOODROW: I asked the information when they were here, as to effect of this.

The CHAIRMAN: If you had an example, I am sure we could get it clarified.

Senator WOODROW: That is begging the question. I think either you or someone else said it would be a good idea to talk it over with the minister. I just suggested that that be put on the list for clarification.

Senator HUGESSEN: May I ask for copies of these memoranda submitted to us by those two witnesses yesterday afternoon with respect to subparagraph (B) of section 139A, in connection with different classes of stock having voting rights.

Mr. IRWIN: I have copies of that.

Senator SMITH (*Kamloops*): I wonder if Mr. Irwin could help regarding a complaint we had yesterday regarding the regulation. How do we justify the regulation governing capital depreciation on automobiles?

Senator MCCUTCHEON: Mr. Irwin fortunately does not have to justify it.

The CHAIRMAN: We cannot get at this problem in this committee, because there is nothing before us.

Senator SMITH (*Kamloops*): I have brought it up.

The CHAIRMAN: We gave away our right some time ago, when we gave them permission to deal with capital cost allowances by regulation.

We shall adjourn until Tuesday morning at 9.30.

Whereupon the committee adjourned.

First Session—Twenty-sixth Parliament

1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-95, intituled: "An Act to amend the Income Tax Act".

The Honourable SALTER A. HAYDEN, *Chairman*

No. 2

TUESDAY, DECEMBER 3, 1963.

WITNESS:

The Honourable Walter Gordon, P.C., Minister of Finance

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29826-5—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	O'Leary (*Carleton*)
Baird	Hayden	Paterson
Beaubien (*Bedford*)	Horner	Pearson
Beaubien (*Provencher*)	Howard	Pouliot
Bouffard	Hugessen	Power
*Brooks	Irvine	Reid
Burchill	Isnor	Robertson (*Shelburne*)
Campbell	Kinley	Roebuck
Choquette	Lambert	Smith (*Kamloops*)
Connolly (*Ottawa West*)	Leonard	Taylor (*Norfolk*)
Crerar	*Macdonald (*Brantford*)	Thorvaldson
Croll	McCutcheon	Turgeon
Davies	McKeen	Vaillancourt
Dessureault	McLean	Vien
Farris	Molson	Willis
Gershaw	Monette	Woodrow—46.

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 26th, 1963.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Crerar, P.C., for second reading of the Bill C-95, intituled: "An Act to amend the Income Tax Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Crerar, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

29826-5—1½

REPORT OF THE COMMITTEE

TUESDAY, December 3rd, 1963.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-95, intituled: "An Act to amend the Income Tax Act", have in obedience to the order of reference of November 26th, 1963, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, December 3, 1963.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators:— Hayden, *Chairman*; Baird, Beaubien, (*Bedford*), Brooks, Burchill, Campbell, Connolly (*Ottawa West*), Croll, Davies, Dessureault, Gershaw, Gouin, Horner, Irvine, Isnor, Kinley, Macdonald (*Brantford*), McCutcheon, Monette, O'Leary (*Carleton*), Paterson, Pearson, Pouliot, Power, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Willis and Woodrow.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and The Official Reporters of the Senate.

Bill C-95, intituled: "An Act to amend the Income Tax Act", was further read and considered.

The Honourable Walter Gordon, P.C., Minister of Finance, was heard in explanation of the Bill.

The question being put as to whether clause 15 of the Bill should carry the Committee divided as follows:—

YEAS: 18; NAYS: 8.

The Clause was declared carried.

The question being put as to whether clause 22 of the Bill should carry the Committee divided as follows:—

YEAS: 17; NAYS: 9.

The Clause was declared carried.

The question being put as to whether clauses 23 and 24 of the Bill should carry the Committee divided and the clauses were declared carried on division.

At 12.15 p.m. the Committee adjourned.

At 2.00 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, *Chairman*: Baird, Beaubien (*Bedford*), Brooks, Campbell, Croll, Davies, Dessureault, Gershaw, Gouin, Irvine, Isnor, Kinley, Lambert, Macdonald (*Brantford*), McCutcheon, McLean, O'Leary, Paterson, Pouliot, Power, Robertson Roebuck, Taylor (*Norfolk*), Thorvaldson, Willis and Woodrow.

The Honourable Walter Gordon was heard in further explanation of the Bill.

The question being put as to whether clause 26 of the Bill should carry the Committee divided and the clause was declared carried on division.

The question being put as to whether clause 28 of the Bill should carry the Committee divided and the clause was declared carried on division.

It was, on division, RESOLVED to report the Bill without any amendment.

At 2.45 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, December 3, 1963.

The Standing Committee on Banking and Commerce, to which was referred Bill C-95, to amend the Income Tax Act, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*), in the Chair.

The CHAIRMAN: Order, gentlemen, please. It is now 9.30 and the meeting will resume.

On the last occasion we stood certain sections so that the minister might deal with them. The minister is now with us and I think he may want to make a preliminary statement before we get down to individual items. Mr. Gordon.

The Honourable Walter Lockhart Gordon, Minister of Finance and Receiver General of Canada: Mr. Chairman and senators, I am very pleased to have this opportunity of appearing before this committee of the Senate. I am well aware of the professional accomplishments and reputation of many of the members of the committee, and of the great interest that all members have in this particular bill. My officials have been taking and are taking careful note of the suggestions, criticisms and comments of honourable senators, and indeed of those made in the House of Commons and by other people. All these suggestions will be carefully studied prior to the next budget.

I have read the transcript of the proceedings of the committee, and I have noted the questions raised by honourable senators, and I shall be pleased to comment upon them. Before doing so, Mr. Chairman, I had thought that if you approve it might be helpful if I made just a few preliminary remarks before getting down to individual clauses.

The CHAIRMAN: Very well.

Hon. Mr. GORDON: The bill is a long one and like the Income Tax Act itself it is very complex. I would hope that one of these days somebody might take on the task of rewriting the Income Tax Act in an attempt to put it into simpler form. Apart from some more or less routine items and some clarifications needed to improve the act, as it stands the amendments provided for in this bill fall into three principal categories. There are a number of proposals for what I had called closing loopholes, or, as some honourable senators put it, measures to extend the law to cover areas previously uncovered. I am sure you are more accurate, Mr. Chairman, but perhaps we are talking about essentially the same thing.

The CHAIRMAN: I didn't want to concede there was any inefficiency in the department in drafting the legislation.

Hon. Mr. GORDON: I think you were proper in pointing that out. The second set of sections, or the second category, deals with proposed changes

in the withholding taxes, and the third deals with certain tax incentives. Two of the proposals for closing loopholes—forgive me if I don't use your phrase every time—have been criticized because of the reintroduction of the provision for ministerial discretion. I would just like to say that I don't like this reintroduction of ministerial discretion any more than anybody else, and, as I have said before, it is intended to be a temporary provision only. The choice really was to do nothing until the Royal Commission on Taxation had submitted its report, or alternatively to stop certain of the rather more obvious or rather blatant practices in this way pending a more permanent solution when the report of the commission has been received, and we have had a chance to study it.

I think all of us were pleased, back in 1947 or 1948, when the Income Tax Act was rewritten and ministerial discretion was more or less eliminated.

There is a big job to be done along similar lines in some of the other acts, certainly the Excise Tax Act is riddled with ministerial discretion. Again I would hope that one of these days a real job could be done on that particular act.

In this case it seemed to me and to those of us in the department that we could let these things carry on for another two or three years or we could take this particular step pending the report of the royal commission. Before making a decision I had a conversation with Mr. Carter to see if his report could be completed earlier than he had planned. I think his original hope, when I first talked to him, was that the report might be ready in March or April 1965 but it looked as if on inquiry it might be some time later than that. He was good enough to consult with his colleagues, and they have rearranged their schedules and their deadline is now the end of 1964. At one time he considered, and discussed with the other members of the commission, whether they would be in a position to put in a preliminary report in time for the Government to act on some of these things if they approved the commission's recommendations by the next budget. But their difficulty is that all the subjects they are dealing with are so closely interconnected that this will not be possible and we will have to wait for about a year before we get their report.

That is the reason this was done. I have explained this elsewhere on a number of occasions and I would just like to repeat again that in my opinion this should be looked upon as a temporary measure and that this whole area of taxation should be reconsidered in the light of the proposals of the tax commission.

The second category of amendments deals with the withholding taxes. Perhaps I might just mention that, to me, one of the most important sections dealing with the withholding taxes, and one which has attracted very little attention, is the provision to exempt from tax altogether bond interest payable to certain institutions that are not subject to tax at all in their own countries. I am thinking particularly of the fast-growing pension funds in the United States. There are two principal purposes in mind in this proposed amendment: first of all, it will give Canadian borrowers access to a fast-growing and increasingly important market and it will give them access to this market in a way that will hold down, at least to some extent, the cost of borrowing.

In the past this particular market for Canadian bonds has not been available and, of course, in the case of other markets, in the last three years the 15 per cent withholding tax has increased the cost of borrowing. This is, at the moment, academic because it is pretty hard to borrow in the United States under any circumstances and it will be until this interest equalization tax is disposed of in one way or the other. For all practical purposes the announcement of that tax has shut off borrowing by Canadians in the American market.

We may be able to borrow a little bit here and there but for any large amount it has been shut off and I don't think there is any doubt that if it had not been for the very lucky break that we had in connection with the Russian wheat deal and the very substantial sums that have come into Canada as a result of it, we would have, by now, been faced with very serious difficulties.

The administration, and particularly Secretary Dillon, was, I thought, extremely co-operative. He moved very quickly when he saw what the effect on Canada had been, back in July, at the mere announcement of this tax, and he was able, with the approval of the President, to make an announcement within two days saying they would recommend that Canada should be exempt from the provisions of the new law, at least in so far as new issues are concerned.

I am sure honourable senators are aware that we have been pressing almost weekly ever since that there should be complete exemption granted to Canada because over the last ten years we have been assisting the United States with their balance of payments problem and have not been a drain on them. But so far we have been unsuccessful in getting the administration to go that far.

I can understand this because they have to consider other countries and they feel they have gone as far as they could. Until the bill gets out of Congress, and this, in my opinion, means both Houses of Congress, although some people think when it gets out of the House of Representatives it will clarify the matter, we shall not be able to borrow in the United States. And when it will get out of Congress is anybody's guess.

We were told at one time that it might be out by September or early October. I came away feeling that it just might be out by Christmas; but I think that I was in a fairly optimistic mood. That was about last July. I really do not believe now that it will be out so soon.

When this legislation is settled, this particular provision that I mentioned should mean that we would have access to a broader market in the United States; and of course the elimination of the withholding tax will reduce the interest charges or the total cost to that extent. I suppose that another way of putting it is that the Government will not collect tax but somebody else will get the benefit.

The proposed changes in the withholding tax on dividends have caused considerable discussion and concern. For many years Canadians have been talking about the desirability of increased Canadian participation in the industry of this country: but because of the difficulties involved nothing has been done about it.

As you know, in other countries this problem, if it is a problem, has been dealt with. I would argue that it is a problem, once the extent of foreign ownership becomes as great as it is in Canada, where the percentage is rising steadily. We are familiar with the figures—60 per cent of all manufacturing, and higher percentages in some of the other segments of industry. That is very much higher than it is in any other country.

In other countries, the issue of non-resident control of industry is dealt with in a variety of ways, either through the official or the unofficial exchange controls or through other forms of legislation.

We have not got those avenues open to us and therefore, if we want to do anything about this question, we are dependent on the tax laws.

I am the first one to agree that there is no easy resolution of this question. The Government believes that the proposed change in the withholding tax will be a move in the right direction.

It was suggested to me by somebody the other day that this was a timid first step in the right direction. I was prepared to agree that it was a first step,

but I said that, after the last few months, I was not prepared to agree that it was a timid one.

Be that as it may, I think it is a step in the right direction and while I am not in a position to vouch for this—and I am certainly not in position to give names or to be specific—I have been informed that a goodly number of companies propose to make stock available as soon as the proposed bill has been given royal assent. I have that information from a variety of different sources and I believe it to be accurate but, as I say, I am not in a position to give chapter and verse.

I think some changes will be needed to take care of particular situations, some of which were referred to by honourable senators last week. Of course, they have also been referred to the Department of Finance.

I have not wished to deal with these hurriedly. All the cases that have come to my attention, including those raised by honourable senators last week, are being carefully studied; and if some amendments are needed, as they very well may be, I think they should be incorporated in the next budget, which will be coming along in the not too distant future now.

In the meantime, I would not like to see us make amendments to deal with specific situations, until we are reasonably sure that the particular amendments that we might think of, to deal with this particular situation, will not create more problems than those they are designed to correct.

Members of this committee have had a great deal of experience in this field, but I suggest that unless we are certain of a situation, to make an amendment to solve the problem of a particular case, too quickly, may not be the wisest thing to do.

What we are doing is to gather up all these cases and we are trying to find ways of assisting all of them, or all of those which come within a pattern, rather than to do it individually.

Questions have been raised about our tax treaties with other countries. I would just like to say a word about that. There have been some informal discussions with the United States officials on this subject. I myself had some preliminary conversations last September. We canvassed the situation in general and the officials of my department had some communication on this subject with the appropriate officials in Washington.

Last September it was suggested to me that it would be preferable to wait until the bill had been passed by Parliament, before getting down to a serious discussion about it. This was the view of the people with whom I will be negotiating; and, as it was their view and as it was expressed after some consideration, I was quite prepared to accept the proposal.

I must say that I thought then, in my innocence, perhaps, that the bill would be passed long since and that by this time we would have been able to have these discussions.

I am anxious to get down to work with the officials of the various countries involved, just as soon as the law has been passed.

I can assure honourable senators that I have very much in mind the difficulty posed by the spokesman for the Moore Corporation last week—or perhaps I should say the potential difficulty that is feared. I am fully aware, of course, that this is a matter of concern to a number of other Canadian companies with subsidiaries in the United States. I will have this very much in mind when we are discussing this subject with the officials in Washington.

Mr. Chairman, the last category of amendments is the category which deals with various incentive programs. I do not know how much you would like me to say about that.

The CHAIRMAN: I think that what Senator McCutcheon and some of the other senators were concerned about was this—what hopes did you have that this would be likely to produce some beneficial results?

Hon. Mr. GORDON: I am very hopeful about it.

Senator MCCUTCHEON: Is that a well-founded hope, or just a hope?

Hon. Mr. GORDON: I would say it is a very well-founded hope, and it is based upon the experience that they have had in the United Kingdom and that they have had in most European countries over a number of years. They have gone in for area development or for the resuscitation of areas that for one reason or another have had a slow rate of growth. Their incentives have been of various kinds. As you know, the British Government is now embarking on a further scheme of the same kind. The experience in some of the Western European countries has been very successful. We have not done this in Canada, or at least done very little of it, although in some ways the need for this kind of thing in Canada is even greater than it is in Western Europe. I think it is fair to say that we all know the economic arguments about the mobility of labour, and that theoretically, ideally, labour moves to where the work is; but we also know that this does not always happen in Canada—that there are certain difficulties. It is difficult for people from the province of Quebec to move to other provinces, and difficult for people in other provinces to move to the province of Quebec. I can assure you if it is necessary the people of the Atlantic area do not take too kindly to suggestions that they should move elsewhere.

The CHAIRMAN: There is no doubt about that.

Hon. Mr. GORDON: And they say, "Why should we?"

Senator THORVALDSON: You were referring to the incentives in Western Europe. Are these incentives by way of taxation as tax incentives?

Hon. Mr. GORDON: They have a whole variety of incentives. They go much farther than we do. They provide capital and very fast write-offs. Somewhere I have a list of what they do. The best speech on the subject that I have heard was given by Pauline Jewett in one of the debates. I do not know whether Miss Jewett is a political economist, or an economist, but anyway she is very experienced and she did a lot of research on this. It was one of the subjects which we thought it would be wise to document and have on the record. If you have not read her speech, you might be interested in doing so.

The CHAIRMAN: Mr. Minister, I think in that connection they even allow, in certain areas, 150 per cent write-off.

Hon. Mr. GORDON: Yes, they do. Well, that is a form of capital contribution, I suppose.

Senator MCCUTCHEON: Dealing with the situation in the United Kingdom, there they will not allow you into certain areas but allow you in others, and will bonus you for doing so, and you either go in or do not go in on those terms. We are dealing in that case with a unitary state, where the government can say, "you cannot build a new factory in the London area"—and that is a pretty big area—"but if you want to go to Newcastle, we will build one for you and do it cheaply." I am questioning whether the different type of incentives in this bill are effective.

Hon. Mr. GORDON: Well, we are hearing about people who are moving into these areas. I believe it is going to be effective. My own guess is that it will be one of the most effective new policies that has been introduced.

Senator MCCUTCHEON: I do not know, Mr. Chairman, what your program is, whether you propose to go through the sections that were stood, and whether I should say any more about this at this time; or do you want to pursue this?

The CHAIRMAN: No. My idea was that the Minister is here, and while he is here he has been making a development of the subject matter. I thought we might let him finish that and deal with any questions while he is here.

Senator McCUTCHEON: I suggest that it might make for a more orderly procedure if he dealt with each section.

The CHAIRMAN: After the general statement has been concluded, yes.

Hon. Mr. GORDON: I have practically finished. You will appreciate that it is now nearly six months since the various proposals were announced; and while I hasten to say that honourable senators have not been responsible for the long delay, I hope you will sympathize with me, nevertheless, when I express the hope that the legislation can now be passed as quickly as possible. I have said that if amendments are required to improve the legislation—and they often are required in connection with legislation that breaks new ground —then I would suggest that they should be introduced at the time of the next budget; and I would just like to say again that I wish to assure all the members of the committee that their suggestions and comments and criticisms have been noted and will be noted and will certainly be studied very carefully in the preparations for the next budget which are now under way.

The CHAIRMAN: Now may I suggest an order in consideration of the sections which were stood. The main concern that we have had appeared to be in relation to the withholding tax and the formula defining degree of Canadian ownership. I was going to suggest, therefore, that we might first deal with the formula for determining the degree of Canadian ownership, which is clause 28, and then go back to clause 22 dealing with the withholding tax, which flows from that. On that basis, unless the committee thinks overwise, let us consider paragraph 28; and we are ready for questions.

You sort of staked out a claim, Senator McCutcheon, in advance. Would you like to present any questions you have?

Senator McCUTCHEON: I raised a specific question with the officials relating to the definition under section 139A(1)(a)(i)(ii) and (A). The group of companies I am referring to are not affected by the withholding tax, but they are affected by the question as to whether they can take advantage of the special incentives which are not included in this bill but which have been passed by regulation.

The CHAIRMAN: That is the accelerated depreciation?

Senator McCUTCHEON: The accelerated depreciation. I talked with a company, and I understand a number of companies are in the same position. Let us take a simple illustration. A company has class "A" "B" and "C" shares, 100,000 shares in each class, and they vote equally on every matter that comes before a meeting of shareholders, except when it comes to electing directors. 100,000 class "A" shares elects two directors; 100,000 class "B" elects two directors; 100,000 class "C" elects two directors. All the shares are owned in Canada. As I read this definition, none of those shares have full voting rights under all circumstances. In other words, the holders of the class "B" shares may elect two directors, but may not vote for the directors to be elected by the class "A" shares or vote against them. I think therefore there should be an amendment, if incentives are going to be made worthwhile and that the department should produce something for us in this matter; otherwise, while the withholding tax provisions do not apply if the shares are all in Canada, nevertheless, they cannot take advantage of the double depreciation provisions that are provided under the new regulations for companies purchasing new machinery, and so on, in the next two years, whatever the period is. It does not seem to me that that situation should be allowed to stand over until a new budget.

Hon. Mr. GORDON: Well, I would want to ask my legal advisors about the point you have raised, and whether these words would exclude them. Certainly they should not be excluded on your example. I agree with you. You are a lawyer, and I am not—or, you were once.

Senator MCCUTCHEON: I am a reformed lawyer.

Hon. Mr. GORDON: Well, you have at least that advantage over me.

The CHAIRMAN: Did you say "uninformed" or "reformed"?

Hon. Mr. GORDON: With respect to that point there is no question at all that if the wording here could be interpreted so as to exclude companies that are completely owned in Canada because they have various classes of shares, then I will say it was certainly not intended to do that. But, whether it does or not is something—

The CHAIRMAN: May I just add this comment. It seems to me that the words "having full voting rights under all circumstances" might well in the short run be the subject of a ruling or a regulation to the effect that in these circumstances they do qualify. There may be other cases as well. I have been trying to think of a happy phrasing to cover the situation you have mentioned, and other possible ones, but I have not yet thought of one. I would rather leave it to a ruling or a regulation until the proper phrasing is found. That is just one man's view.

Senator MCCUTCHEON: Yes, Mr. Chairman, but the minister we have before us is not the minister who will be making the rulings or the regulations. I do not like to see it left up in the air on that basis. This probably ties in with the representations which the minister has no doubt read by Canadian Petrofina and—

Hon. Mr. GORDON: On this particular point you are raising, Senator McCutcheon, I might say that this is the first time it has been raised with me. There have been lots of other variations of this, but not with respect to the point you have raised.

Senator MCCUTCHEON: Then, we go a little further in the light of the chairman's suggestion that these things can be done by ruling. The minister has no doubt read the representations that were made by Canadian Petrofina. This point was dealt with also by one other company, Miron, I think, which dealt with the situation where all shares of the company having full voting rights were not listed.

Hon. Mr. GORDON: This is under (B)?

Senator MCCUTCHEON: Yes, but there may be certain other shares having full voting rights at all times that are listed but where nevertheless there was no one holding of 75 per cent of the equity which presumably is the vice—if it is a vice, and I do not accept that it is—if that is the vice that the minister is talking of in this section, where not more than 75 per cent of the equity is held by more than one foreign holder and where there was an opportunity to Canadians to buy on the stock exchange a certain class of shares with full voting rights, and where if they bought them all they would have 25 per cent or 28 per cent—

Hon. Mr. GORDON: Would the shares rank equally with the others?

Senator MCCUTCHEON: That is right.

Hon. Mr. GORDON: And in equity?

Senator MCCUTCHEON: But the Canadians have a preference. That is how you sell Canadians shares. That is what happens when somebody frightens them into selling some shares on the Canadian market. In order to get Canadians to buy them they give them a preference, but aside from that they are

equal in voting powers and equal in dividends but with a slight preference with respect to dividends. There could be an omnibus clause—I do not pretend to be able to draft it; that is why I say I am a reformed lawyer—which would take care of this situation, and which provides that where it can be clearly established that either in the case of listed shares that the appropriate percentage of the equity is available on the market to Canadians if they want to buy it, or, in the case of unlisted shares, that the appropriate proportion of the equity is owned in Canada, then that company is a good company.

The CHAIRMAN: Senator, it seems to me, following on from what you have said, that at some time at least another paragraph will have to be added to this formula to cover the kind of situation where you have at least 25 per cent, and maybe 50 per cent, of the voting shares listed, and you have the other requirement that not more than 75 per cent is held by a non-resident.

Senator MCCUTCHEON: That is right, and it should include also the case of the non-listed shares with respect to which you can establish the same things.

The CHAIRMAN: That is why I said "at least 25 per cent and maybe 50 per cent listed", but there may be an infinite variety of those. I am looking at it again from the short run point of view, having regard to what the minister has said. This is only expressing my own view, but if you have, for instance, as in the case of Canadian Petrofina not more than 75 per cent of the shares being held by one non-resident—

Senator MCCUTCHEON: By one non-resident.

The CHAIRMAN: Yes, I think all that brings the reasoning in the short run back into (A) on the assumption that if not more than 75 per cent is held by one non-resident then the other 25 per cent is resident.

Senator MCCUTCHEON: That is the situation under (B) now.

The CHAIRMAN: But you may be back into (A) on that basis in the short run, and a ruling, if there was an understanding, would do that because I am concerned about a quick phrasing of an amendment when you are determining what a formula is going to be.

Senator MCCUTCHEON: I do not think there will be too much difficulty about that amendment. Just following up your suggestion, you have two alternatives. You can have (A) and (B), and then you can have (C) under which the onus would be on the company to establish that not more than 75 per cent of the voting shares were held by one non-resident or one non-resident and associates, because under (B) now, Mr. Chairman, as I read it, you can have a situation—and I would like to know if the minister agrees with this—where 75 per cent of the shares are held by a foreign parent, 24 per cent are held by other foreign individuals, the shares being listed on the stock exchange, who are not associates of the foreign parent—ordinary portfolio investors—and one per cent are held in Canada. Twenty-five per cent of the directors are resident in Canada. That company qualifies for the low rate of withholding tax. I am just expressing one man's opinion on the whole question of the degree of Canadian ownership.

The CHAIRMAN: Are there any other questions on this point?

Senator CONNOLLY (*Ottawa West*): I have listened to this discussion, and I have to say that I am impressed with what you say about the possibility of rulings. I think you always have to anticipate the necessity of rulings with respect to sections that are as complicated as this. Surely the discussion that has gone in this committee today and on other days on the use of the words in those two subsections "under all circumstances" would enable the department to come down on the side that Senator McCutcheon contends for. I think that under all these circumstances they would. Now—

The CHAIRMAN: I said "in the short run".

Senator CONNOLLY (*Ottawa West*): Yes. Senator McCutcheon says: "Well, it is not the minister who issues the ruling". That is true, but those of us who are not kept lawyers know that when we go to the tax department for a ruling very often—and perhaps in most cases—the decision as to what direction the ruling should take does not emanate from the tax department alone. The Finance Department comes into it. I think in the short run some experience under this by way of rulings would prove to be pretty helpful, particularly with the background of this discussion.

The CHAIRMAN: Are there any other questions on this?

Senator CROLL: Mr. Chairman, it would appear from what the minister said—and I gather that he and his department canvassed the situation pretty thoroughly—that the example Senator McCutcheon gave has not even been considered by him, thus indicating that it is quite an extraordinary, rather than an ordinary, sort of business deal.

Under those circumstances, no bill can take care of every conceivable situation, and there may be an exception for the time being and they will have to live with it for three or four months, until such time as the department has had some experience in the matter.

Senator MCCUTCHEON: I do not want to be put in that position, and I do not want to quarrel with the minister, for whom I have high regard and with whom I have had a long friendship, but the minister's department knows of this example, and Mr. Irwin indicated that when he gave evidence before us last week.

Mr. IRWIN: Mr. Chairman, when I said the department had a record of this kind of case I must have misunderstood Senator McCutcheon. We certainly have cases where there are various classes of shares, but all those I can remember were trying to qualify under Big "B", where there was the matter of listing of shares on the stock exchange.

Hon. Mr. GORDON: To support Mr. Irwin, I had not heard of the particular example Senator McCutcheon mentioned.

Senator CAMPBELL: I would like to make a comment on what Senator Connolly (Ottawa West) has said, Mr. Chairman, that it seems to me, on a careful consideration of the wording of this section it is quite impossible for the department, or either department, to make an effective ruling which would not be contrary to the specific words used in this section.

In approaching matters of this kind in the past we have always tried to work out a clause which would cover the situation specifically in language. We might even incorporate in such a clause the power vested in the minister to pass regulations that would cover such cases as this. I do not think it should be too difficult to draft another subsection here which would cover the situation specifically.

Senator CONNOLLY (*Ottawa West*): I do not say it is easy to get these rulings. As a matter of fact, it is sometimes very difficult to get them.

Senator KINLEY: Mr. Chairman, I am a layman.

The CHAIRMAN: That is fine. We need some, or there would not be any lawyers.

Senator KINLEY: To my mind I cannot conceive of a company that has strong foundations, in which the holders of 25 per cent of the isued shares of the corporation should not have full voting power under all circumstances. I like the sort of company where the directors have full voting power under all circumstances.

The CHAIRMAN: This is not a case of the voting of directors but of the shareholders.

Senator KINLEY: Yes, the shareholders. That is the same thing. It is 25 per cent of the shareholders. Then you have the other 75 per cent in the company, and usually the majority of the company is controlled by them, and if they do not have the controlling majority there are special circumstances. I do not know what this is, but as a layman I would like to know about this, because the manoeuvres of company law are rather in a state of mystery. These things are usually done for a purpose, and I want to know if those purposes are good.

The CHAIRMAN: I do not quite understand, but do you mean, why the percentage is stated in this bill as 25 per cent?

Senator KINLEY: Somebody else has two directors. It does not make sense to me. You divide the directors, and there is division in the family before you start.

The CHAIRMAN: The case Senator McCutcheon has developed is an existing case, and I am sure there are others, and it is often the case that various classes of shareholders want the right to elect a certain number of directors. You will find that is not new, it is not novel: It is a very well-known method of getting some people to invest their money in a company. They will invest, but only if they can have control of a certain section of the board by having the right to elect a certain number of directors.

Senator KINLEY: They want control as minority shareholders, and I do not like that.

Senator THORVALDSON: Mr. Chairman, I wonder if I might make this remark with regard to this discussion? I am not so concerned as my colleague, Senator McCutcheon, is in regard to the details of this section. We listened to the brief of Petrofina the other day, and we recognized they had a point; but after all is said and done, if this legislation passes it is only a few months to another session, and if we find that this particular section, in so far as their brief is concerned, is objectionable, then it is a very simple matter for Parliament to amend the section in order to cure the inequity which has been indicated. It seems to me also our whole discussion in the Senate on second reading of this bill a few days ago was in regard to the principle of these five sections —namely, sections 22, 23, 24, 25 and 28. As you are aware, many senators on both sides of the house indicated great objection to the principle that was being adopted in regard to this matter of withholding tax as related to degree of ownership.

The CHAIRMAN: You mean, using the withholding tax as a weapon to force this Canadian ownership? That is the matter of principle?

Senator THORVALDSON: That is what I mean. The words used in the Senate on various occasions during the debate by members, as I say from both sides of the house, were that we were introducing a discrimination for the first time depending upon the degree of ownership of corporations—namely, whether that ownership was to a certain specified degree Canadian. Consequently, it seems to me that before we consider the details of these sections we should consider the broad principle as to whether this committee will approve the sections or delete them.

The CHAIRMAN: I thought we were proceeding in this fashion, that we were going to deal with these sections that are the application of this principle. Then, having dealt with them and any questions you may ask as to their scope and as to whether they go far enough, you can decide whether you approve or disapprove of the principle. Then you either vote against the section or vote for it.

Senator THORVALDSON: I do not want to see us spending the whole day on this aspect of the bill which I, for one, do not consider of any great importance because we know that the intention is as generally indicated in the bill and that if there are defects in detail those defects could be cured later on.

The CHAIRMAN: There is a general authority in the Income Tax Act itself, under section 117, to enact regulations which could be enacted in relation to this section we are talking about now.

Senator ROEBUCK: But you cannot make regulations that contradict the act. This is "under all circumstances".

My thought was very much like Senator Campbell's that this thing ought to be fixed now rather than left to some very indefinite rights on the part of the department to cure what we pass knowing we do not agree with it.

Senator MCCUTCHEON: Section 117 is pretty limited and provides for regulations, but it spells out the kind you can make and it does not say you can make regulations contrary to the act.

The CHAIRMAN: I am not sure a regulation in the case you have cited would be a regulation contrary to this section. I am not sure of that yet.

Senator CAMPBELL: Mr. Chairman, the minister and his officials have heard the case put forward now, and are well aware of it. It has always been the experience of this committee in dealing with matters of this kind, particularly tax bills, that where there is some error of slight omission some of the officials of the department itself draft a section to put into the bill and come forward and have it enacted. It seems to me in this case it is a perfectly simple matter, and one which, if it had been anticipated originally by the drafters of the bill, would have been included. However, we are involved in a rather complicated new procedure here, and it is understandable it was overlooked at the time, but now it would be a simple matter to have the officials of the department come forward this afternoon with another clause which would cover it.

The CHAIRMAN: I am not sure it is as simple as you say it is.

Senator CAMPBELL: Well, I think you and I could draft it—and I am not a draftsman.

Senator LAMBERT: May I ask if the minister could indicate anything in the way of a definite interval before another budget?

Hon. Mr. GORDON: I think I would be in trouble, but it is a matter of the budget normally being introduced in March or April.

Senator LAMBERT: I was assuming myself it could not be in less than six months.

Hon. Mr. GORDON: That is right.

Senator LAMBERT: The implication, at least from what the minister said, is that these should be regarded as tentative provisions pending the introduction of another budget which would be six months from now at least.

Hon. Mr. GORDON: Something like that.

Senator LAMBERT: Has he considered the possibility that the difficulties might be intensified during that period as a result of some imponderable conditions that are certainly evident to the naked eye at the moment in relation to other countries.

Hon. Mr. Gordon: You mean in relation to our tax treaty?

Senator LAMBERT: Yes, I am thinking of changes in the situation in the United States that have taken place in the last ten days.

Hon. Mr. GORDON: Well, I think for all that any of us know we may be dealing with new officials. I quite agree. That is clearly something that none of us have any influence or control over. I was planning as soon as this bill was

passed to follow up where I left off in September, and start negociations with the appropriate people in Washington. If they are not there I shall start with their successors, whoever they may be.

Senator POULIOT: Mr. Chairman, I would like to ask Mr. Gordon if the Government would consider favourably the drafting of an entirely new Income Tax Act by a nonpartisan committee of the Senate in order to make it clearer and more understandable by all taxpayers. It may take two sessions or two years, but the result would be very good. If we had the blessing of the Government for doing that, I am sure that the Senate could do the job as it has done difficult jobs in the past.

Hon. Mr. GORDON: Mr. Chairman, I am interested in what Senator Pouliot has to say. I think, with respect, we should wait until we receive the report of the Royal Commission on Taxation, and if that report proposes very extensive changes in the law, or even if it proposes that the law should be simplified and clarified, then certainly somebody should tackle the job of doing the simplification and clarification. As you say the Senate has done some useful jobs in the past. I have to be a little careful about the sensitivities of all parts of this Parliament—so you won't expect me to go any further except to say that I am interested.

Senator POULIOT: It was just a suggestion.

Senator CROLL: Getting back to section 117 and dealing with the question of making regulations, it seems it could not possibly be wider because of paragraph (j) which says:

117. (1) The Governor in Council may make regulations

. . . .

(j) generally to carry out the purposes and the provisions of this Act.

The purposes are there, and in making the regulations they have indicated what the purposes are, and for the time being they might very well make the regulations.

The CHAIRMAN: I only referred to this section in support of what I said.

Senator MCCUTCHEON: Would the minister give us his views on the reasonable request made by Senator Campbell and Senator Roebuck?

Hon. Mr. GORDON: I thought the request was very reasonable. As I said earlier, I am not very anxious to rush into drafting changes until I have had a chance to assess all the representations, and I have not done that yet. There are a great many of them. I would prefer to make these changes, in the wording and that sort of thing, if we find what you fear is correct, and that these words would eliminate Canadian-owned companies. If that is right, and certainly it is a new suggestion—it wasn't one put forward before and it certainly was not one that the Department of Justice officials raised—I would like to be absolutely certain of it. I don't say this disrespectfully, but I have been nervous about amendments that were made quickly on the floor, in order to take care of something or other, because my short experience has indicated that unless they are worked over by the people who drafted the whole bill, we can get into difficulties. I would be happy to discuss this with the Department of Justice people who drafted this bill to see if there is something that obviously needs to be done now, that won't get us into more trouble, and that would avoid the troubles which you suggest are already here. I would also want to have their opinion whether section 117 is broad enough to take care of the difficulties you see in the interim.

Senator MCCUTCHEON: I think that is satisfactory to me. If the minister would report to us on that and let us have the amendments.

Senator GELINAS: Mr. Chairman, if there are no amendments to this bill, what happens to any projected new financing similar to Canadian Petrofina and other companies—I gather there are about eight or nine in Canada—who may come in with that type of financing.

Hon. Mr. GORDON: I would think in the first place, since you started with the word "if" we should settle that first. Depending on the opinion of the Justice Department, they would either be perfectly safe under this regulation, or presumably they would arrange their financing to come under this.

Senator GELINAS: Would they get a ruling then?

Hon. Mr. GORDON: I do not see why not.

Senator THORVALDSON: In that regard I have no desire to discuss further this question of ministerial discretion, but it seems, having regard to what the minister has stated, and as a temporary expedient, there might be an additional clause giving the minister authority to make a ruling regarding these points that are clouded, as suggested in the brief of Petrofina the other day. I must say that I agree with the minister that I do not think it is wise that in committee we should try to amend in detail a taxation act.

The CHAIRMAN: Can we now look at sections 22 and 23. These are really the application of the formula to the withholding tax, and I think we are all familiar with the effect of these sections. Are there any questions you would like to ask the minister?

Senator CAMPBELL: Mr. Chairman, I raised the question the other day as to whether there wasn't a loophole in the act pertaining to certain companies. I think it was to Mr. Irwin to whom I addressed this question. The companies I refer to are those whose year ends sometime after January 1, 1967, and that within the following taxation year would qualify by acquiring the necessary Canadian content. Would dividends paid between January 1 and, say, May when the first fiscal year commenced after January 1, 1967 be entitled to the credit provided under the act?

Hon. Mr. GORDON: Mr. Irwin mentioned this point to me, Senator Campbell. There were two ways of going at this. We thought that if all companies, regardless of their year end, were given three and a half years from June 1963 in order to qualify that that would be fair to everybody and that is why the date taken was January 1, 1967 rather than the year end of the companies within the 1957 taxation year, whatever it is. If we had taken the latter approach some companies might have got four or four and a quarter years' time to readjust their affairs whereas others would only have three and a half years.

Senator CAMPBELL: So that they have the time to comply with it by making whatever corporate changes are necessary and determining the date to fit into the scheme of the act.

Hon. Mr. GORDON: Yes.

Senator MCCUTCHEON: Before dealing with the general principle of this section, Mr. Chairman, I raised a question at our last meeting as to the possibility of double taxation under the provisions of new section 139A (1) (a) (ii) (B) where you have an American parent which has a Canadian subsidiary which in turn has a Canadian subsidiary, and as I read the section, if the low man on the totem pole company declares a dividend in excess of the dividend allowed under this section, the 5 per cent tax will apply on the excess. Then, if company B which is a mere holding company for subsidiaries in turn passes that through in an amount in excess of that allowed by the section there will be another 5 per cent tax, and then of course there will be the withholding tax. Again I do not see how you can possibly deal with that by way of a ruling.

Hon. Mr. GORDON: I do not, either.

Senator MCCUTCHEON: The statute is quite clear and it would seem to me the proper amendment would be that notwithstanding anything herein provided there would be no tax on dividends passing from one Canadian resident company to another, the vice surely is when the dividends go out of the country.

The CHAIRMAN: Senator McCutcheon, you have a provision already in the Income Tax Act that dividends passing from one Canadian company to another pass without tax, that is without tax payable by the respondent. This of course is a tax imposed on the payor company.

Senator MCCUTCHEON: I do not think the minister has had an opportunity to consider that, or has he?

Hon. Mr. GORDON: I have considered it. I went over the transcript and talked to my officials about the point that you raise and actually there is a point. You have a point. There are some reasons which I would like to mention for leaving it the way it is. It is intended to discourage companies from transferring large amounts of dividends now in anticipation. This was the purpose of the 5 per cent tax, in anticipation of the increase in the withholding tax to 20 per cent in 1965. There is also the point that if a refund were allowed it would be paid to the Canadian company and not to the nonresident shareholder. I do not know if that is too important.

The CHAIRMAN: I think, Mr. Minister, an explanation that Mr. Irwin gave the other day was that he had to make this 5 per cent penalty look like a penalty and not part of any withholding tax so as not to enlarge your problems with other countries. That is a point I would be interested in as a matter of law, as to whether that is necessarily so or not. Of course in the short run you can avoid it by simply paying the dividends you have been paying in the past, that is, do not increase the amount and you therefore would not incur any penalty.

Hon. Mr. GORDON: We are talking about a short period.

Senator MCCUTCHEON: What is a short period?

The CHAIRMAN: Six months.

Hon. Mr. GORDON: No, until January 1, 1965. The tax is only applicable during that period.

The CHAIRMAN: Yes, we talked about one year.

Senator MCCUTCHEON: Mr. Chairman, may I go on to some of the other points I discussed the other day.

Looking at clause 23 (1)—a management or administration fee or charge. This amends section 106 of the act. This provides, as I understand it, for a withholding tax of 15 per cent on a management or administration fee or charge, and then of course on page 21 it exempts certain services performed in the ordinary course of a business including the performance of such a service for a fee, and the nonresident person and the payer were dealing with each other at arm's length. Mr. Chairman, when you drew my attention to that provision at the last meeting I did not see that that was an "and". So you must have both, value for services rendered and dealing at arm's length. Now this surely upsets commercial practice completely. A parent and its subsidiary are not acting at arm's length. The parent provides know-how and management services and other services on a basis which is perfectly proper, where the fee charged is appropriate for the service rendered. We are now going to say whether it is proper or not. We are going to impose that withholding tax.

The CHAIRMAN: Do not overlook (b) or (1c) on page 21—there is an "or" there. You can always avoid the limitation that you face in the earlier provisions by having a specific account for specific services.

Hon. Mr. GORDON: Mr. Chairman, I think all I can say on the main point, is that the experience was, so I was informed by the Department of National Revenue, that following the increase in the withholding tax of 15 per cent in December 1960 that the amount of these management charges had gone up very substantially. It was suggested instead of taking the money out by way of dividends and paying the 15 per cent withholding tax they were taking it out by way of management fee and paying no tax. While this is perfectly proper if there is a specific service performed it was not intended that companies instead of paying dividends could pay management fees and pay no tax on it.

Senator MCCUTCHEON: I quite appreciate that but isn't that already covered in the tax convention with the United States, under Article 4—isn't there a chance that you do both things here?

Hon. Mr. GORDON: Under Article 4 the tax auditors have the authority to adjust the accounts of the company if payments have been made improperly or if they have been charged too much by their foreign parent company or if they have sold goods at too low a price and that sort of thing. If you think of this management fee on the basis that I put it to you, as an alternative to a dividend, then under Article 4 probably the tax auditors might say it is not a legitimate charge against profits.

Senator MCCUTCHEON: And charge it back?

Hon. Mr. GORDON: Yes. But when you come to the actual payment from the subsidiary to the parent the payment is made whether it is allowed as a deduction for income tax purposes in Canada or not. If the payments represent an alternative to the payment of a dividend then it should be subject to the same tax that the dividends would be subject to.

Senator MCCUTCHEON: You have answered my question. In other words you contemplate making use of both this section and Article 4.

Hon. Mr. GORDON: Yes. In cases where there is an attempt to get around it.

The CHAIRMAN: Article 4 makes it taxable income. This section permits you to apply withholding tax in the same circumstances.

Senator MCCUTCHEON: Turning to section 23, the following subsection, which the minister said had not received a great deal of comment, this is the section which eliminates withholding tax on certain classes of persons who are not subject to tax in their own countries. It is on page 19, clause 23, the second amendment.

I am entirely in sympathy with the amendment and asked that that particular section stand, only for this reason. I take it that the philosophy behind this whole set of sections is that there is an unreasonable degree of foreign management of certain manufacturing and other assets in this country.

I take it—and the minister can disagree with me at any time—that the minister—well, by his own statements, I know he does not believe that we can go on forever in this country without some foreign capital in the foreseeable future.

Hon. Mr. GORDON: You interpret me completely accurately.

Senator MCCUTCHEON: Thank you. I wonder why you did not go one step further in this subsection and in this amendment and exempt dividends from the withholding tax.

Here we have these great pools of money which are very valuable pools for Canadians to have access to, and they are portfolio investors and I know of no pension fund, no mutual fund that ever interferes with management at all. They go in and talk to you and if they do not like what you are doing they sell the next morning.

They are the ideal investors in Canadian equities, unless we believe we can put a wall around ourselves and prevent foreigners from holding equities at all, and everyone knows we cannot do that.

I wonder what the minister's comments would be on that. This is the ideal type of investor.

Hon. Mr. GORDON: This is the point. It could be done. It is a proposal which was not considered when the last budget was being prepared.

Senator MCCUTCHEON: Not considered?

Hon. Mr. GORDON: Yes, it was not put forward by anybody. It was a proposal which I suggest should be considered before the next budget. I do not want you to interpret that to mean—

Senator MCCUTCHEON: No commitment implied.

Hon. Mr. GORDON: —to mean that I am approving of it, because I would need to think carefully about it. It is a proposal for a budget change and I think it should be very carefully considered, just like all the other proposals which are beginning to flow in.

I do not want to enter into an extraneous subject, but this request for suggestions has been—

The CHAIRMAN: Taken seriously?

Hon. Mr. GORDON: I was going to say "profitable". It certainly has produced a lot of suggestions.

Senator MCCUTCHEON: In referring to the incentive regulations to which we are returning, the minister pointed out that there were different methods used in different countries. Different methods are also used in certain countries for controlling the inflow of foreign capital and the extent to which foreign ownership of existing assets may be acquired. You may have to go before the Treasury Board, the Foreign Exchange Control Board and so on.

What concerns me is that those controls are all direct controls. You know the rules yhen you go in.

We have encouraged capital to come into this country for many years. We have a great company, which Mr. Lockwood described in his evidence, which has been here for 50 or 60 years; suddenly we change the rules, after he is here and we discriminate against him. That seems to me to be a serious objection to this section.

I am wondering how optimistic the minister is that this degree of Canadian ownership is going to flow from these provisions, or if there might not be a reaction.

I put it to Mr. Lockwood that the Canadian company might cease paying dividends when the 20 per cent tax became payable. It is a world-wide company. Its Canadian operations are very small. That is true of most foreign subsidiaries; they are very small in relation to the parent. It could generate funds which it will use—I do not like this expression but it has been commonly used—to "buy more of Canada," or alternatively to advance those funds to other companies in South Africa, Nigeria, Australia, or New Zealand, or to make direct investments in those countries.

I see nothing here that will require the Canadian subsidiary of a large international trading company to make its shares available to Canadians, if it were not prepared to do so in any event.

When I think of the risks we are taking—risks described by Mr. Tory with regard to Moore Corporation, which is only one of a number of companies in that same position—the risk we are taking of retaliation, with very little certainty that we will accomplish what we are looking for here, I wonder if we are justified in doing this at all.

Mr. Chairman, that is what I want to pose to the minister.

Hon. Mr. GORDON: To begin with your first remark, Senator McCutcheon, in the first place no assurance was given at any time that the tax rates would remain the same.

Many of these companies were established here at a time when we did not have these taxes.

On the specific point of the withholding tax, it was not very long ago, as you know, that the rate was 5 per cent, and it was then changed to 15 per cent.

Originally there was the 5 per cent and a 15 per cent rate, depending on the circumstances of the ownership. It was then changed to 15 per cent for everybody. It is being proposed now that the rate be changed to 20 and 10 per cent, depending on the ownership.

The argument that we are doing something entirely new, something which is discriminatory and therefore unfair and unpleasant, does not really stand up in the light of past experience.

When you say that a company like Lever Brothers of Canada is not being compelled to pay dividends at the 20 per cent rate, of course you are absolutely right. There is no suggestion in this bill that people should be forced to pay out so much of their earnings and in that way be subject to a 20 per cent tax.

Senator MCCUTCHEON: In other words, you are not looking for revenue.

Hon. Mr. GORDON: No. If Lever Brothers or any other company like that want to do the things you suggest, there is nothing to prevent them. As you know, various Government leaders over a period of years have exhorted people with investments in this country to follow certain patterns. This has not been very productive. The speeches were listened to pretty seriously but they were not followed by any inducement or other action or legislation, and therefore they were not taken as seriously as they might have been.

Senator MCCUTCHEON: There is the fact, of course, that the Canadian investor may want something that the parent does not want. I can think of one case of a very large company which offered five per cent of its shares on the Canadian market some years ago when these exhortations were being made, not by the former Government but by the Government before that—

Hon. Mr. GORDON: Yes, I am not suggesting—

Senator MCCUTCHEON: I know you are not. This was ten years ago. They sold five per cent of their common shares in the Canadian subsidiary on the Canadian market, and then they decided they did not want to pay dividends. In order to assuage the tender feelings of the Canadians they instituted two classes of stock. They paid a preferred dividend on the common shares that they sold to the Canadian public. It took them five years before they gradually put their own shares on the same dividend base. I cite that as an example of the difficulties. I think the minister's answer to my question—

Hon. Mr. GORDON: I would like to say that I do not think the feelings of the Canadian public are any more tender than the feelings of people of any other country. You have mentioned that a couple of times, and I thought I would put in a word.

Senator McCUTCHEON: Yes. Could I ask one more question? You have spoken about preliminary discussions with United States officials regarding negotiations. There is a difference of opinion as to whether when this bill becomes law, if it does become law, the 30 per cent withholding tax will apply immediately in the States or whether it will only apply 13 months from now, and that is not a very long period. How quickly do you think you can renegotiate a treaty with the United States which would avoid the heavy penalty that would be imposed on this particular group of companies which are valuable assets to Canada and of whom one at least, as Mr. Tory has said, will have to rearrange its affairs and leave the country if that 30 per cent becomes effective?

Hon. Mr. GORDON: I read that statement, and I wondered what the net effect would be on the shareholders, 65 per cent of whom, I think he said, were Canadians who would immediately lose the 20 per cent tax credit.

Senator McCUTCHEON: I think the affairs could be arranged without doing that.

The CHAIRMAN: Of course, I read Mr. Tory's statement as being disjunctive—that is, that they would have to either rearrange their affairs or leave the country.

Senator McCUTCHEON: You may be right.

Hon. Mr. GORDON: Yes. You asked me how long it would take to renegotiate this treaty. I obviously cannot give an answer to that. Senator Lambert just pointed out there may be changes in the administration. All I said earlier was that I had had some preliminary discussions in September, and at that time I had hoped to continue them very soon thereafter. I do not really think it would be in anybody's interest for me to go further in saying how far I went in the negotiations.

Senator McCUTCHEON: Let me put it this way: Supposing within six months you obtain a satisfactory treaty—and I do not know what you consider to be satisfactory—

The CHAIRMAN: And you do not get an indication.

Senator McCUTCHEON: That is right, I do not get an indication. The thing that worries me is the possibility of it being sent to the Senate and sitting there for a year or two years as have other treaties we have negotiated in the tax field. In the meantime these companies who are left in this unenviable position where they do not know when the axe is going to fall, or even if it is going to fall.

Hon. Mr. GORDON: That is right. I am sympathetic with them and their management. It is perfectly obvious that you cannot negotiate with respect to new legislation of this kind which entails negotiations with other countries which are not prepared—and it is perfectly understandable, in my opinion—to start the negotiations until the legislation has been passed. This causes anxiety for a number of people, but I suppose that is inevitable in a major move of this sort.

Senator KINLEY: I just want to ask how much revenue is involved in this legislation in the year?

Hon. Mr. GORDON: Senator, this was not done primarily for revenue purposes. There will be a reduction in revenues because of the reduction to 10 per cent for the companies that qualify. There will be an increase in revenues from those who pay the 20 per cent, but obviously that will depend on how many of them fall into each class and how much they pay in the way of dividends.

Senator KINLEY: In 1956 it amounted to $437 million, and in 1961 to $536 million. These companies are coming into Canada and spending money in Canada. Now they are beginning to make profits and take them out of Canada.

Hon. Mr. GORDON: I think, Senator, I have the figures here for 1962. I have not got them for previous years. Last year the dividends paid out amounted to $570 million, and the dividends paid in amounted to $125 million.

Senator KINLEY: That was the imbalance between Canada and the United States?

Hon. Mr. GORDON: I think these figures are global.

Senator KINLEY: Then, your budget deficit has to be added to that, and that is probably going to be $700 million. The United States could take reprisals. It seems to me that Canada is the sufferer and not the United States.

Senator MCCUTCHEON: Do you mean that we could take reprisals?

Senator KINLEY: I do not like reprisals, but I do like good bargains.

Senator CAMPBELL: Following something that Senator McCutcheon asked, we recall that in 1961 there was a change in the withholding tax. It was increased to 15 per cent. As soon as that act was passed the United States changed its withholding tax to 15 per cent, as I understand it. The thing that concerns most of the Canadian companies with wholly-owned subsidiaries abroad is whether, first, they are likely to continue to be wholly-owned subsidiaries abroad, and it is in the interests of the Canadian companies to maintain that status, particularly in the United States. Now, is it not likely that as soon as this act is passed and the 20 per cent rate goes into effect, either at that time or at some future date, that there is a risk of the rate going to 20 per cent before the new treaty can be negotiated.

The CHAIRMAN: 30 per cent.

Senaor CAMPBELL: I was going on to ask whether there was a possibility of the treaty being treated as being abrogated, and the rate going to 30 per cent. I think that is what concerns most Canadian companies doing business abroad. They feel there should not be any withholding tax. The general feeling is that under these reciprocal arrangements between the two countries that Canadian companies should attempt to get into the United States market in a very substantial way. The only manner in which they can get in is by subsidiaries in the United States. Our experience with the United States has been so difficult that we are limited to a large extent in that respect. But, Canadian companies are not in any way limited in getting into the United States markets through wholly-owned subsidiaries. We have made tremendous progress in the last few years in that respect, and a great many companies which are building up their businesses in the States do not yet pay income tax, or they are not affected by this withholding tax in the United States, but they will be in the future. Is it not likely that if we maintain this policy that when the treaty is negotiated there will be a minimum rate of 20 per cent, with the possibility of the rate being 30 per cent?

Hon. Mr. GORDON: We are speculating, and I cannot assist in this except to repeat that I started these preliminary conversations in September, and until I continue them it would be foolish for me to speculate about what might happen in another country.

Senator CAMPBELL: But is it not logical to think that all the treaties that have been negotiated were based on a reciprocal arrangement, and that we would be subject to the same rates of withholding tax in the United States as we apply in Canada?

Hon. Mr. GORDON: I do not think I will help my negotiations if I speculate on this particular point.

Senator CAMPBELL: You are probably right, and I will not press the question.

Senator THORVALDSON: Mr. Chairman, in regard to that point, there have been suggestions from very well informed sources, and sources that are very interested in this matter—and I mention, for instance, the Winnipeg *Free Press*—where they suggest, would it not be wise to withhold this legislation, say, until next spring, until the next budget; and then, following up on what Senator Campbell said, that would give the minister another six months or another few months, four, five or six months, to negotiate further with a view to getting the answers to some of these very serious problems which have been raised?

Hon. Mr. GORDON: I just said that when I tried to take this up it was suggested that we would make more progress when we passed the law. Then we could get down to discussing it.

Senator MCCUTCHEON: Is not that a little ominous?

Hon. Mr. GORDON: It was not in the context of the conversation, and in the context of the conversation there was a good deal of reference to the fact the rates do not increase until January, 1965. But I am not holding anybody to that because neither of the participants in the conversation—myself and the man I was talking to—was a member of the legal profession. This was a practical approach to the negotiation, and it was not binding on either of us.

Senator BAIRD: Lawyers do not make a practical approach?

Hon. Mr. GORDON: I did not mean to imply that at all.

Senator THORVALDSON: The minister may not want to reply, or may not know, but I was wondering, if such legislation passes, whether it is proposed to renounce the treaties we have with other countries.

Hon. Mr. GORDON: Well, the notice has to be given before the end of June in any year. The rates were increased to 15 per cent in December, 1960, weren't they?

The CHAIRMAN: The legislation actually took place in the first part of 1961.

Hon. Mr. GORDON: No action was taken to deal with the tax treaties prior to June, 1961. Then we come along to June, 1962, and again no action was taken. Then we came to June, 1963. I did not think that was where I wanted to begin my negotiations, so the notice was not given in June, 1963.

Senator CROLL: Notice by whom?

The CHAIRMAN: Canada.

Hon. Mr. GORDON: In the normal course, in June, 1961 having changed the rates of withholding tax Canada would have given notice to the other countries with whom she had tax treaties that she proposed to re-negotiate them or cancel them, or whatever she wished to do. There is a whole variety of them and they are not all the same. She did not do this. Then we came around to June 1962, and again no action was taken. The same course was followed last year.

I think we have to remember that in June, 1962 there had just been an election. There had been a very difficult financial and exchange situation, and no action was taken. Then last June the budget had barely been presented, and it was perfectly clear—to me, anyway—there was an order in which those negotiations should be conducted, and because I wanted to follow an obvious order I felt it was not the time to give the notice to all the other countries. I am dodging your question about what is going to be done in June, 1964, and if you will permit me I will keep on dodging it because it is something I am not prepared to be specific about at this point.

Senator McCUTCHEON: Will the minister agree with this, that there is generally a difference between the other tax conventions and the U.S. tax convention?

Hon. Mr. GORDON: Yes, certainly.

Senator McCUTCHEON: In that under the U.S. tax convention he can unilaterally denounce this one section regarding withholding tax?

The CHAIRMAN: Either side can do it.

Senator McCUTCHEON: But if either side denounces other tax conventions and gives the six months' notice—I do not think they are all as of June, but gives the requisite notice, then the whole convention is over and it can affect a great many other situations besides withholding tax. We might find ourselves in a very unenviable position then.

The CHAIRMAN: The preferred practice would be to re-negotiate the particular item rather than give notice of termination.

Senator CROLL: That is what he said he had been doing all along.

The CHAIRMAN: No, this is other than the United States.

Senator CROLL: But we are dealing mostly with the United States, and that is what the minister is saying that he has been doing.

Senator McCUTCHEON: Senator Thorvaldson raised the question of other countries.

The CHAIRMAN: Are there any other questions? In relation to clause 28, which gives the formula for a degree of Canadian ownership, that is the item concerning which the minister said he would consult with Justice. I do not expect we could have the answer to that this morning, but we may by 2 o'clock this afternoon. Therefore, I am suggesting that we deal with the other sections which stood the other day, and then stand section 28 until 2 o'clock, to see if the answer on that point is then available.

Senator CROLL: Mr. Chairman, which sections did you mark as stood?

Hon. Mr. GORDON: Do you want me to stay?

The CHAIRMAN: We would be very happy if you did.

Section 15, that stood because it was tied into the whole question of withholding tax.

Senator McCUTCHEON: That is just consequential.

The CHAIRMAN: That is simply increasing the rate of non-resident owned investment corporations after 1964 from 15 to 20 per cent. Are you prepared to deal with that now?

Senator CROLL: I move the adoption.

Senator McCUTCHEON: I do not think its adoption is appropriate. We are not going to adopt these piece-meal, surely?

The CHAIRMAN: My proposal is that we deal with the sections that stood, except section 28, where a question was raised and we have to get a further answer from the minister.

Senator CROLL: Let us meet Senator McCutcheon's objection. I think it can be. I will move the adoption of the bill subject to the matter that the minister has left outstanding for this afternoon at 2 o'clock.

Senator McCUTCHEON: We were going to have a discussion on section 16 which was stood. Are we going to have our discussion on it now?

The CHAIRMAN: I thought you had dealt with incentives under section 16. You and the minister had quite a discussion.

Senator McCUTCHEON: I stopped talking about it because I wanted to ask him other questions.

The CHAIRMAN: You can continue with section 16 now.

Senator McCUTCHEON: The point that interests me, Mr. Gordon, is the qualifications that are set out on page 14 of the bill. The resolution which is set out on the blank page opposite page 12 would not indicate any substantial restrictions on the right of a taxpayer to move into a prescribed or designated area and obtain the tax advantages that are set out in the resolution. When we come to clause 3, starting at the top of page 14, we find that the assets—and I am paraphrasing this—used in the business in a prescribed area must be 95 per cent of the assets used everywhere by the taxpayer in that business. I am suggesting, and I would like your comments, that means that no large Canadian resident company can take advantage of this section.

The CHAIRMAN: Except . . . ?

Senator McCUTCHEON: Except by the incorporation of a subsidiary.

The CHAIRMAN: That is right.

Hon. Mr. GORDON: I think that is the way they would do it.

Senator McCUTCHEON: Why did you do that?

Hon. Mr. GORDON: They can do it if they can distinguish separately the business that is going to be in there; but I think if you are talking about a Canadian corporation the practical way is to incorporate a subsidiary.

Senator McCUTCHEON: But why?

Hon. Mr. GORDON: Because the objective of this is to have new machinery, new assets, new construction, and not just the moving of something from one place to another.

Senator McCUTCHEON: You have taken care of that in the next section. I want to know why I have to have 95 per cent of all my assets used in the business in the designated area. You have taken care of the new machinery in the next section, and we will come to that.

Hon. Mr. GORDON: I am getting a little coaching here before I answer your question. I am not too clear on how you could do this, without a new incorporation. It seems to be the logical way to do this. That is what they are doing. If you could suggest how they could do it without a separate incorporation, it would be fine.

Senator McCUTCHEON: I would suggest you might persuade Molsons to build a brewery in that part of Nova Scotia which is a designated area. Would they have to incorporate it separately and take all the risks? It seems to me you are cutting down the incentive to where it is meaningless.

Hon. Mr. GORDON: I must disagree with you completely on that. This is not supposed to be a stumbling block for the people you are talking about.

If you are talking about Molsons—I note the senator is not here—they have separate corporations in various provinces. It has not handicapped them in Ontario. I forget what their percentage of the Ontario business is now, but you might know. I take it that if they had any intention of moving into another province—perhaps we had better consult the senator himself on that, as I am not in a position to speak for him.

Senator McCUTCHEON: What you are telling me is that any large business can really take advantage of this by incorporating a subsidiary—

Hon. Mr. GORDON: Yes.

Senator McCUTCHEON: —even though as a matter of good business practice it may prefer not to do so.

Hon. Mr. GORDON: It may or may not be good business practice and it may or may not prefer to do so.

Senator McCUTCHEON: The effect of that is that you cannot charge off the special depreciation you get against the earnings from that part of its business. That is why I said it was cutting down the incentive.

Hon. Mr. GORDON: Yes, that is right.

Senator McCUTCHEON: Is that why you did it?

Hon. Mr. GORDON: I want to hesitate on that. There are several reasons, and we wished to be certain about this, so that there would be new businesses established in these areas, of the kind described here, which would give some sort of economic underpinning to these different areas. It was not intended just to make it a little easier. It was not intended to give a special concession to an existing company, unless it did certain things. Now, by doing certain things, if the concessions are pretty attractive—and I think they are proving to be so—

Senator McCUTCHEON: You ran into some difficulty where you had large businesses already in a designated area.

You ran into some problems where you found large businesses already in a designated area?

Hon. Mr. GORDON: You are taking exception to it, as you did earlier—to this whole concept. Of course there are difficulties. If we are too troubled about the difficulties, then the easy thing is to do nothing.

What I was saying earlier is that this is a form of incentive that has proved very effective in other countries and we should do more of it, not less of it, in Canada.

Senator McCUTCHEON: I will not pursue that.

Hon. Mr. GORDON: We are entiled to disagree on the subject.

The CHAIRMAN: We have started a practice here of dealing with bills section by section, and I would prefer to follow that practice. The only item which stands for further information is clause 28.

Shall section 15 pass?

Hon. SENATORS: Agreed.

The Chairman: It is carried. Shall section 16, which deals with incentives, carry?

Senator McCUTCHEON: Just a moment, please.

The CHAIRMAN: Section 16 goes over from page 12 to page 15.

Senator McCUTCHEON: Mr. Chairman if we are going to deal with these matters now, I think Senator Thorvaldson and I have an amendment to make, which will involve a number of sections. I do not think we can deal with it now. I assume that we will be meeting to discuss this, after we are through with the minister and his officials. I have no objection.

The CHAIRMAN: Let me put this. That is perfect and is the procedure we have often followed. We are ready to deal with the sections. The proposal is that we would adjourn for this particular clause 28 until 2 o'clock, if you would be ready then, after conferring with your officials, to deal with the question.

Hon. Mr. GORDON: Yes.

Senator CAMPBELL: I can anticipate what is likely to happen here with regard to the general principles of this legislation. I think there are one or two things the minister might clarify for us here. He is introducing what I consider to be a rather novel and new approach to the tax act, in requiring certain Canadian companies to acquire a degree of Canadian content in order to keep themselves free from discriminatory taxation. Is the principal purpose in this the purpose of raising revenue, in order that we could balance our payments?

Hon. Mr. GORDON: I must say it is one of the purposes, or you would have me in a difficult position.

Senator MCCUTCHEON: You have already said it was not.

Hon. Mr. GORDON: The sole purpose.

Senator MCCUTCHEON: The principal purpose.

Hon. Mr. GORDON: That will give a balance. This will raise revenues, of course, and provide incentives.

Senator CAMPBELL: Is that the principal purpose, or is the principal purpose to try to force foreign companies—

Hon. Mr. GORDON: Senator, I really need counsel to help me on this one. I would say it was one of the principal purposes.

Senator CAMPBELL: It would help us in determining the advisability of passing such legislation. The only other purpose I could imagine is to force the foreign corporations to give up part of their Canadian holdings.

Hon. Mr. GORDON: I do not know about this word "force". I would have to disagree with you on that.

Senator CAMPBELL: Creating an atmosphere where it is to their advantage to do so.

Hon. Mr. GORDON: That is right. I go for that. I do not think there is very much more I can really say on this that would be helpful. This is obviously a central part of this tax bill and as far as I am concerned I certainly so interpret it.

Senator MCCUTCHEON: While the minister is here, there are one or two sections which we passed and on which I asked an opportunity to put some questions, although we had passed them.

I would just like his comment. I am only going to comment on one.

On clause 19, where he introduces the provision that companies operating a pipe line for the transmission of oil or natural gas should be allowed to deduct, in the computing of drilling and exploration expenses, and so on—

Hon. Mr. GORDON: I noticed your comments on it.

Senator MCCUTCHEON: Would you like to comment on my comments?

Hon. Mr. GORDON: I think you have not shown it should be extended as they do in the United States.

Senator MCCUTCHEON: Would it not be useful if it were?

Hon. Mr. GORDON: That is a matter of opinion. I just made a note of it, as one of the things to be considered before the next budget.

Senator MCCUTCHEON: That is satisfactory.

Senator CROLL: You have a dissenter, because I do not agree it is.

Hon. Mr. GORDON: You will not object if I put it on the list?

Senator CROLL: Not at all, but mark it off, too.

Senator GELINAS: Mr. Chairman, I readily understand that the larger corporations could make these shares available to the Canadians who have this 25 per cent. How about the small corporations? I think they are going to suffer very heavy penalties if they are going to take advantage, either through their private contract or through public issue. I think it is a penalty.

Hon. Mr. GORDON: If they are not, they are not paying dividends.

Senator GELINAS: They may pay the dividends, but they are not attractive to Canadian shareholders.

Hon. Mr. GORDON: Obviously, senator, these sections must apply to everybody, and there may be companies that I can think of, companies which have

not been making much money, that are not established; and I am not worried too much about them, because they will not be in a position to pay dividends anyway.

Senator GELINAS: I would agree that some of them are not in a position to pay dividends, but they cannot find a market.

Hon. Mr. GORDON: Perhaps this will give some members of your profession a way to make that possible for them.

Senator GELINAS: That is what I am trying to do now.

The CHAIRMAN: Thank you very much, Mr. Minister.

Hon. Mr. GORDON: Thank you, Mr. Chairman and gentlemen. I will be back at 2 o'clock.

(Hon. Mr. GORDON withdrew.)

The CHAIRMAN: Now, gentlemen, we had referred to Section 15 and it carried. Does the committee want to undo that?

Hon. SENATORS: No.

Senator MCCUTCHEON: I am sorry, Mr. Chairman, but things went a little too quickly for me—

The CHAIRMAN: I did not think that that was possible with you, Senator McCutcheon.

Senator MCCUTCHEON: Yes, they did. I did not think we would be dealing with the specific matters until the minister and the officials left. I would like to move, seconded by Senator Thorvaldson, that sections 15, 22, 23, 24 and 28 be struck out, and the other sections renumbered accordingly.

The CHAIRMAN: Now, we are not considering section 28 at the moment.

Senator MCCUTCHEON: That is the whole of section 28, and sections 15, 23 and 24.

The CHAIRMAN: Senator, the Chair, unless it is overruled by the committee, cannot accept an amendment which is really in the negative. If the section is presented to the committee you accomplish the same thing by voting against it. There is authority for that if you want me to quote authority.

Senator MCCUTCHEON: I accept your ruling.

The CHAIRMAN: That is why I wanted to call the sections individually. If you do not agree with a section you can vote against it.

Senator MCCUTCHEON: That is fine. Can we revert to section 15?

The CHAIRMAN: Shall section 15 carry?

Hon. SENATORS: Carried.

Senator MCCUTCHEON: No.

The CHAIRMAN: Those in favour please raise their hands?

The CLERK OF THE COMMITTEE: Yeas, 18.

The CHAIRMAN: Those to the contrary?

The CLERK OF THE COMMITTEE: Nays, 8.

The CHAIRMAN: The section carries.

Shall section 16 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 22 carry?

Hon. SENATORS: Carried.

Senator MCCUTCHEON: No.

The CHAIRMAN: Those in favour please raise their hands?

Senator THORVALDSON: Mr. Chairman, may I speak to the motion?

The CHAIRMAN: Yes.

Senator THORVALDSON: I just want to make a few remarks, Mr. Chairman, because this section and the succeeding ones, namely, sections 23, 24 and 28, are the sections which really deal with this question of withholding tax.

As the members of this committee are aware we had a complete debate in regard to the principle which is enunciated in these sections in the Senate last week. Many honourable senators spoke in regard to this principle from both sides of the house, and nearly every one who spoke with respect to the principle involved opposed what was being done by this bill. As is well known also there is, and has been, a great deal of controversy throughout Canada in regard to these sections, and the principle of discrimination which it is claimed is involved in them.

For instance, beginning two or three months ago this problem was very thoroughly discussed by the Canada-United States committee, and in a lengthy report that committee—which, as you all know is made up of very representative Canadians of all political parties and from all branches of business, and Americans as well,—severely condemned what was being done in the original budget resolution. I think it is well known that in matters of trade during the last few years, and, indeed, during the last few decades, particularly with respect to trade between Canada and the United States, there has been an effort by both countries to minimize restrictions on trade so far as could be done, and I think, by and large, those efforts have succeeded to a considerable extent. I think the flow of trade between our two countries is very great.

It is a well known fact that unfortunately we do not sell to the United States as much as they sell to us. Nevertheless we have had in a way a semi-common market between our two countries in trade. But, as has been indicated by the Canada-United States committee, and as has been stated by innumerable people throughout Canada, and as has been referred to in such powerful and influential newspapers as the *Winnipeg Free Press* and others, we are now for the first time about to lose the only common market that has existed in the world in regard to exchange and financial transactions, namely, the common market between Canada and the United States.

It has been stated in the Senate *Debates* and everywhere else in Canada that for the first time Canada is invoking discrimination in regard to our capital transactions with other countries. I have yet to see it denied anywhere, even on the floor of the Senate, that the legislation contained in these sections that I have referred to is discriminatory.

So, I say we are now attempting to pass legislation which is of the highest significance because of the principle involved, and goodness knows what will happen in the future in regard to financial transactions, especially between Canada and the United States, if we now proceed to pass legislation which will discriminate between taxpayers of the same class, which is the case here. I say that is the principle involved, and certainly in the light of the speeches made in the Senate the other day I think we shall all have to stand up and be counted to discover whether everybody who spoke on this bill meant what he said, or whether it is now appropriate to overlook those speeches.

I have discussed the principle of the bill, and the first problem it creates, namely, the problem of discrimination. I come now to the second point, and that is the point raised by Mr. Tory before this committee a few days ago. Indeed, the same point had been raised in almost identically the same way by myself in my speech in the Senate on this matter on Tuesday, November 26. Senator McCutcheon raised the point. I am referring, of course, to the difficulties that will be created for companies such as the Moore Corporation to which Mr. Tory referred. I do not want to mention names, but as is well known Canadian companies, particularly in the last ten or 15 years, have been very

active in expanding their business into the United States. I myself am associated with a company that has two United States subsidiaries, one of which is just across the border in the State of New York. It employs nearly 200 people. I cite that as an example of what is happening to such an enormous extent in regard to Canadian companies that have been expanding their operations into that market.

I think it is common ground between most of us, and certainly between myself and nearly everybody who has spoken on this bill in the Senate, that if this legislation goes into effect those companies are going to be in great difficulty and, in fact, the value to Canadians of those investments that have been made in the United States, and which are now being made there, will be greatly diminished if not completely destroyed by this legislation.

When we consider, for instance, that a withholding tax on Canadian dividends entering Canada is likely to be in the amount of 30 per cent we can easily see the tremendous problem that these companies are going to face. I think that these companies are valuable to Canada. Yet Mr. Tory indicated very clearly, and I think it is the conviction of most of us, that if this legislation goes through and if, as appears likely, there will be a great increase in the withholding tax against those companies, then they will be compelled to make some kind of re-organization to get away from the situation in which they are going to be involved.

Now I have not thought it out, and I do not know what they have in mind in regard to such re-organization, but I can very well guess it will not be of benefit to this country. In fact, anything they do I believe would be of great detriment to us. So, honourable senators, I think we are indulging here—indeed I think we are beginning something we do not see the end of, and I think there is a great danger for this country in passing such legislation.

Now I would like to refer once again to the editorial I referred to a few days ago that appeared in the Winnipeg *Free Press*, which was written, by the way, in the light of the speeches made by the honourable chairman of this committee and by the honourable Senator Crerar and the honourable Senator Campbell, where that newspaper squarely condemned this measure. I quote from it briefly where it said:

> This measure obviously is unsound in principle, dubious in operation and almost certain to provoke foreign retaliation.

Then, as indeed I think I suggested to Mr. Gordon this morning, I referred him to one paragraph of the *Free Press* editorial, which is the last one which I would like to quote to this committee:

> The Senate, therefore, should postpone the Gordon tax while the Government makes up its mind on fundamentals. With more time to think, the Government would thank the Senate for preventing a grave mistake and would drop the Gordon tax altogether in favour of a consistent over-all policy covering capital imports.

I would like to add that I myself—and I am sure this can be said of every other member of this committee—have great sympathy for the objectives of this legislation. In other words, we deplore the fact that too much of Canada is owned by people outside this country, and we would like to see Canadians own more of it. Nevertheless, my thinking, and I am sure it is certainly the thinking of some of my colleagues, particularly those who have opposed this legislation in the Senate, is that there must be some other way of creating the incentives for Canadians to buy back Canada rather than discriminating against our friends in other countries.

So, honourable senators, for that reason I am in opposition to these sections and would like to see them deleted from the bill.

The CHAIRMAN: Now we have section 16.

Senator CAMPBELL: I would like to add a few observations, Mr. Chairman. First of all, I might say that we find ourselves in a very difficult position here in dealing with a budgetary item involving taxation, fiscal policy and Government policy, because we must, under all circumstances, interpret this proposed legislation as being Government policy.

It seems to me that we are regarded as the chamber of sober second thought, and if this new legislation, which it is, this new philosophy about taxation were introduced in a resolution of some kind apart altogether from a fiscal measure, probably we would take quite a different attitude on this whole matter. I have spoken in opposition to the principles of this measure, but I would just like to point out, so we will not lose track of the important issue in front of us, that this is the first time the Government has laid down a policy to discourage foreign investment in Canada—and that is exactly what this resolution does. We have always prided ourselves in having a very good atmosphere for foreign investment in this country, and I for one feel we have profited greatly by the foreign investment that has come in here. All you have to look at is the tremendous development that has taken place in our automotive and oil industries, all as a result of foreign capital, the terrific financing that has been provided in all our major developments which could not have been carried on without foreign investment in this country. At the present time we are simply saying that we do not approve of anyone coming into Canada unless they are willing to take Canadian partners into the enterprise in opening a business here. Those of us in business will say it is an impracticable thing from every point of view, because most of the big, successful enterprises that come into Canada are subsidiaries of American companies, and we benefit greatly from the technological skills and assistance we get there. They are going to take a second look, and there are places other than Canada for investment.

We are agreeing on a principle which, in my opinion, is wrong in every way as far as this country is concerned, because we still are an undeveloped country. Also there has been no inquiry and no finger has been pointed at a single instance where the Canadian subsidiaries of foreign companies have done anything that is not in the interests of this country. They have employed a vast number of people; they have provided us with manufactured goods which we otherwise would have had to import; and the whole scheme of things has been such that it has brought about the growth of Canada and the growth of our production.

It is all right to hear the Minister of Finance saying that he would take a second look at some of these things when the next budget comes along, but it seems to me what really should be done in cases of this kind is to hoist the whole thing until they have taken a second look at it, because we are putting measures in here which are certainly detrimental to this country and are not in accordance with the practices and policies which we have carried out in the past, and it is going to have repercussions as far as our Canadian companies are concerned doing business abroad. It is all right for the minister to say he feels that he can negotiate some treaty that will be favourable to us under all the circumstances, but I am realistic enough to realize that under all these reciprocal tax agreements you only get what you give, and that means that if this policy is permitted to stand the best our foreign subsidiaries of Canadian companies can hope for is a 20 per cent withholding tax at the source, and no provision for offsetting that tax anywhere else. It simply means that they cannot continue to carry on business under those circumstances in

foreign countries. Therefore, you create an immediate barrier to the establishment of Canadian subsidiaries abroad.

I do not know how we can deal with this situation under a fiscal measure such as this, but it seems to me we should certainly voice our objections and possibly include something in our report which will be forcefully brought to the attention of the Government when these measures are up for further consideration.

I do not see how we can refuse to pass the measures as they stand, but I am so positively and wholeheartedly against them I propose to vote against them.

Senator McCUTCHEON: On the point raised by Senator Campbell, the minister on two occasions this morning said they were not a measure for revenue. Then on a third occasion he started to qualify himself a little bit. However, I have his own press release issued on budget night, so I am not reading from the proceedings of the other house, in which he estimated the changes in withholding tax rates (net) for the 1963-64 fiscal year—which is what we are dealing with—as being nil. He went on and suggested that he might get an extra $5 million in 1964-65, but he is going to bring down a budget for 1964-65.

Senator ROEBUCK: I would like to make my position clear. I was not able to take part in the debate in the house for physical reasons, and in consequence I am not going into the details of this measure as completely as I would like to.

I would like to say that there are many features of it that I do not like. One is the discrimination between the good boys and the bad boys, as someone put it, without any moral principle involved. I do not like that. Distinctly I do not like it.

I do not like the feature of the bill which discriminates against foreign investors in favour of Canadian ones.

I do not propose to go into all this fully now. I only want to state my position in connection with it. I think we have gained a great deal by foreign investment. It was foreign money that built our railroads, erected many of our schools, our municipal buildings, and provided us with the capital for many, many valuable enterprises.

It has brought about employment that could not possibly have occurred, had it not been for foreign investment.

The United States borrowed very greatly a century ago from England, and the States would not have made the progress that they have made had they not done so.

To talk about "foreigners owning our country" is I think poppycock. As a matter of fact, the money that comes in here is not repaid by us. The investment pays off for itself and repays not only the interest but also the capital, in due season. If it does not do that, it is a bad investment; and in that case we lose nothing, it is the foreign investor who loses. So I do not like that; distinctly I do not like it.

On the other hand, now we have had long experience, you know, in the Senate, in matters of Government bills of this kind. This is largely experimental and I am under the impression that we have made our views very clear in the things that we have said. Having done so, we have gone far enough. I think it would be a mistake for the Senate to interfere with what is apparently Government policy.

We have stated we do not like these various matters, but since it is Government policy and is a fiscal measure, I am inclined to vote for it, pass it, and say to the Government "You had better do some more thinking on this for your next budget". Therefore, I am going to vote for it.

The CHAIRMAN: Are you ready for the question?

Senator BURCHILL: I would like to echo what Senator Roebuck has said. I am a layman and have listened with a great deal of interest to the discussions which have taken place on this bill.

I think the future of Canada depends on the closest possible trading relations with the United States. I cannot see any other future for us here and I think we have to do everything we possibly can to make those trading relations as close as possible.

I abhor the thought that there is anything in this bill that will separate us. I do not like it, for that reason. On the other hand, I am conscious of our powers as a Senate in matters of taxation. I heard the minister say this morning, more than once, that he had begun negotiations with the United States, that he had several conversations, and that the passage of this bill would help in those negotiations. He is the minister, he is in charge. Under all the circumstances, I feel we should pass it.

The CHAIRMAN: Are you ready for the question? The question is on section 16. Would those in favour please raise their hands?

Senator CROLL: Sections 22, 23, 24 and 28?

The CHAIRMAN: We stood section 16, on incentives. Would those in favour raise their hands?

Senator THORVALDSON: Are we still discussing the same problem, Mr. Chairman, because if we are I would like to say after words in regard to this subject matter I did not hitherto touch on, but which has been referred to by other senators. It is the question as to whether the Senate should not oppose this legislation because of its having a possible effect on ways and means. I wonder if you would allow me to say a word on that, because seemingly that affects the thinking of some senators.

The CHAIRMAN: Section 16 does not involve that.

Senator THORVALDSON: I would like to speak on it when we come to the point.

The CHAIRMAN: Are you ready to vote on section 16? Would those in favour—it is carried.

Now we come to section 22.

Section 22 is the section where you can say the word you were proposing to say, Senator Thorvaldson.

Senator THORVALDSON: Thank you, Mr. Chairman. I realize of course that we in the Senate have from time to time debated this question of whether we should interfere with Government legislation, if it affected the problem of ways and means.

I recognize also the strength of the principle which Senator Roebuck referred to, namely, that by and large it has been the policy of the Senate not to disturb too severely Government policy where it had been declared as such.

Consequently, I want to say I recognize those principles that we may have practised. Nevertheless, in regard to the question of ways and means, I think it should be said in this committee, that in no place have I found the minister make a statement, until the mild statement this morning, that ways and means might be involved. Never have I found him even to suggest that this was a matter that had anything to do with taxation. He has always referred to it as having two objectives and two objectives only. The first one is presumably an attempt to increase exports to the United States. Secondly, it was an attempt to help Canadians "buy back Canada".

Now, I suppose we are subject to the same limitation here as in the Senate chamber, namely that we cannot quote speeches made in the other place.

The CHAIRMAN: You are always safe, though, in saying "As reported in the papers".

Senator THORVALDSON: Yes, a press release. I just want to say that I have in my hands the House of Commons *Debates* for October 16, 1963. The minister's speech on second reading of this bill starts at page 3636. If I may say this, Mr. Chairman, he does refer to those two objectives and I gather from his speech that he indicates that they are the sole objectives in regard to this legislation.

I repeat again that, nowhere—

An Hon. SENATOR: Did he not say it this morning?

Senator THORVALDSON: I said that what he said this morning was the first indication he made that he considered it might affect ways and means, but I think all honourable senators who were here recognized that prior to that he had been pretty specific in his remarks that the objectives of the bill were as indicated by me a moment ago, namely those stated by him throughout the course of the last few months.

Senator MCCUTCHEON: His reference to ways and means was an afterthought only.

Senator KINLEY: What is your opinion about ways and means—$800 million?

Senator THORVALDSON: My opinion is that ways and means are not affected at all. This is my view after listening to the debates in the Senate on this point since I came here and after reading other authorities on the subject. Indeed, there were some quite useful statements made on this subject by the honourable Leader of the Government, Senator W. Ross Macdonald, during the debate on the Estate Tax bill a few years ago. On this subject of ways and means, the whole problem has been considered very thoroughly in the Report of the Subcommittee appointed to Determine the Rights of the Senate in Matters of Financial Legislation, which is issued in the name of the honourable W. B. Ross, K.C., chairman, as far back as 1918.

Senator ROEBUCK: No doubt we have the power.

The CHAIRMAN: Senator Thorvaldson, I was going to say this. The chair had not taken any position which would indicate that anything that has been done here so far is lacking in authority or is trespassing in an area where the Senate should not go.

Senator THORVALDSON: I was going to conclude in one sentence and say I have no intention of going into these things because I think we have discussed them over the years, and I believe members of the Senate are pretty clear on what their powers are and what they are not in that regard. Certainly my opinion, which is in agreement with the remarks made by Senator Roebuck, is that we have power to delete these sections. We have power to do everything with regard to so-called money bills with the exception of increasing taxes.

Senator ROEBUCK: There is no doubt but that this is a money bill.

Senator THORVALDSON: It is a money bill, but if you adopt the principle that anything attached to a money bill—and this statement has been made time and time again in the Senate—thereby makes it a money measure with which the Senate is incapable of dealing, then we are in real trouble, and the Senate is powerless.

The CHAIRMAN: Let us not say anything that would indicate we might be in trouble. Those in favour of section 22 please raise your hands?

The CLERK OF THE COMMITTEE: Yeas, 17.

The CHAIRMAN: Those to the contrary?

The CLERK OF THE COMMITTEE: Nays, 9.

The CHAIRMAN: The section carries. Section 23?

Hon. SENATORS: Carried.

Senator McCUTCHEON: No.

The CHAIRMAN: Does it carry on division?

Senator McCUTCHEON: Very well, on division.

The CHAIRMAN: I recognize the yeas as having the louder voice. Section 23 carries on division unless somebody wants a vote.

Senator THORVALDSON: I think the principle has been voted on.

The CHAIRMAN: Section 23 is carried. Section 24?

Hon. SENATORS: Carried.

The CHAIRMAN: The only section standing is section 28.

Senator BAIRD: Why is that standing?

The CHAIRMAN: That is standing until 2 o'clock so that we can hear from the minister. The minister is coming back to express his views on the question. There will be no notice of our resuming at 2 o'clock. We will just meet here at that time.

—Luncheon adjournment.

Upon resuming at 2.00 p.m.

The CHAIRMAN: The committee resumes its hearing.

When we adjourned this morning we thought we would have just one section to deal with, section 28, upon which the minister is going to make a statement, but while we talked about section 26 this morning we did not get down to certain points in it, and on one of those points Senator McCutcheon wants to speak. This is on what was called dividend stripping and the powers of the minister in that regard. So I suggest we deal with section 26 now. Are you ready to say what you have to say, Senator McCutcheon?

Senator McCUTCHEON: Yes, thank you, Mr. Chairman.

The minister said that he was not happy about ministerial discretion, and I do not think anyone in this room is happy about it. He said these sections are temporary. Whether he would consider saying that the sections would expire on December 31, 1965, which would give him time to bring in two more budgets and straighten this thing out, I do not know, but I have a much more important point to make.

There are two ministerial discretions here. One covers the so-called dividend stripping, and the other covers the case of associated companies. Now, in the case of associated companies, if the Minister of National Revenue exercises his discretion the risks can be assessed in advance. One knows the maximum risk one runs is the difference between paying "X" per cent and "Y" per cent—and I forget what the low percentage is.

The CHAIRMAN: Fifteen.

Senator McCUTCHEON: It is more than that, is it not?

The CHAIRMAN: I thought you said, "below per cent".

Senator McCUTCHEON: I said there are two sets of ministerial discretion, and the reason I am not arguing the case of associated companies too far, while I do not like the discretion, is that at least one can assess the risks. One knows the risk is that instead of paying the lower tax on the first $35,000 of taxable income one will pay the full corporate rate, so you can assess the risks and determine what you will do. But with the first subsection of the new section

138A I see no way in which you can assess the risks. The Minister of Finance will not be giving the rulings; the minister will not be exercising his discretion. His colleague, the Minister of National Revenue, is reported in the press to have said that his officials will be available, as they always are, to discuss these matters with the taxpayers, and so on. But when he was asked, as I read it, point blank whether he would give rulings he indicated that he would not give rulings; and, of course, I think, as the chairman would agree, even if he gave a ruling it would not be binding, unless there were specific provision in the act for a ruling which would be binding as between the taxpayer and the Crown. So the rulings mean nothing.

The position we are in is that no one, no lawyer, can advise a client, in many circumstances, as to what might happen here, and the client has no way of assessing the risk, because as Mr. Little, who appeared before us last week said, the rates might vary from zero to 80 per cent. The zero struck me as being very low, and I do not know where he got the zero from, but I can understand the 80 per cent on the amount the minister determines must be added back and included in income.

The other question I recall being raised with the officials, Mr. Chairman, was the question as to whether this section—as it appears to me as a reformed lawyer to be—is broad enough to override the provisions of section 105A—and I see my friend shakes his head—and the other statutory provisions as to dividend stripping. The minister wants this section to go through, and he says it is temporary. I am always worried about "temporary" provisions in a tax law, because I have known occasions—and I am sure the minister has—when the temporary provision stayed for a long, long time. However, I am not impugning the goodwill of the minister in this connection.

The CHAIRMAN: Senator, we have "temporary" buildings in Ottawa.

Senator MCCUTCHEON: That is right. I lived in them in 1942, and they are still here, although they were said to be "temporary" then.

It seems to me, that having regard to the fact that we have statutory provisions for dividend stripping—and I do not like that term—we have statutory provisions which impose a tax, under certain circumstances and in which certain procedures are taken, that we can go along with this subsection (1), much more happily if we had a maximum tax rate stated therein.

As I recall the dividend stripping sections, under certain procedures you pay a tax of 15 per cent. Under other procedures you pay a tax of 20 per cent.

I would be quite happy to go along with the minister, with the proviso that in no case shall the tax imposed as a result of this passing back be in excess of 20 per cent.

Otherwise, I think we have no provision for rulings. I do not know how a practising lawyer would advise his clients.

As I pointed out the other day, Mr. Chairman, taking the personal example, I have a personal company from which, under the provisions of the Dominion Companies Act, I can call down my preferred shares, which I paid for in cash, I can strip all the surplus out of the company, perfectly legitimately, under the provisions of the Dominion Companies Act; but I would not dare do anything, when faced with this.

If I had some idea of the area in which I could be prejudiced, then I would make up my mind.

I think this is an impossible situation. The alternative of course is to suggest to the minister that he does not need these sections, that he could proceed under the present section 138.

I have heard all the arguments as to why he feels he cannot proceed under that section. However, I feel very strongly that we must have a maximum rate

appropriate to the other statutory dividend stripping provisions put in this first subsection.

The CHAIRMAN: Is there anything you have to say to that?

Hon. Mr. GORDON: If there were a maximum rate it would defeat the whole purpose of this. If, as Senator McCutcheon points out, there are sections—section 105—which permits or provides an avenue in which I dare say some people, with personal holding companies, would not be too keen about this, because they would have to pay the regular rate on a portion of the distribution and the 15 per cent rate would only apply to an equal amount.

I am certainly not going to presume to express a legal opinion in this company.

However I was assured that the wording of this section, as it stands presently, would take care of any situation that has already been created, such as Senator McCutcheon has just suggested.

Senator McCUTCHEON: How would it take care of it, Mr. Minister?

Hon. Mr. GORDON: That you would not have to pay any tax on it. You have said that you would take out the redeemable preferred shares, that they are there and that they are eligible to be redeemed.

Senator McCUTCHEON: My friends in the profession are very dubious about that. Let me put it this way. The minister has cited the case where—

Hon. Mr. GORDON: As I have said on other occasions, this is provided to stop similar situations to the one the senator has just referred to in his own case, but it was not thought that they should be retroactive, to go back and catch the people who, quite properly—

Senator McCUTCHEON: I have not redeemed the shares yet.

Hon. Mr. GORDON: You do not have to.

Senator McCUTCHEON: That is not good enough, Mr. Chairman.

The CHAIRMAN: Cannot we deal with this on a general basis?

Senator McCUTCHEON: Well, let us deal with it on a general basis.

The minister has suggested that you might not want to use—I forget which of these subsections; it is the subsection where you can capitalize on a 15 per cent payment an amount equal to the dividend you paid out. He has pointed out that you pay tax on these dividends and you get the balance on the issue of the shares tax free subject to the 15 per cent payment.

As I understand the legislation presently in existence, I do not have to take that route. I can take the route of going through the investment dealer, in which case it is 20 per cent over all.

All I am asking the minister is why he does not put that 20 per cent limitation in here, to prevent me from endeavouring to escape all tax? I do not intend to describe to the committee the way you do it. The chairman knows it and many members of the committee know. Let me say this. If they are to say, "All right, you go through these other operations, instead of going through the statutory provisions we put before you, then we are going to tax you 20 per cent." I would be quite happy with that. But I am not happy with the situation that may result in anything, as Mr. Little says—and I am sure the minister will agree that Mr. Little knows his tax law—that might result in anything from zero to 80 per cent.

Hon. Mr. GORDON: I am not clear on the generality of your example.

Senator McCUTCHEON: You have a very expert adviser there. I hate to argue with him.

Hon. Mr. GORDON: I thought you were going to get off your own circumstances, senator. You suggested what you could do. You mean that anybody could do?

Senator MCCUTCHEON: Anybody could go to an investment dealer. If you allow it by statute, anyone could go to an investment dealer. Why should you threaten him with more tax under this section if he does not go to an investment dealer?

The CHAIRMAN: Senator, I think what was intended—I am not saying at the moment how it works out—was to catch any distribution of undistributed income in respect of which, on its distribution, no tax was paid.

Senator MCCUTCHEON: Well, I would put a maximum rate on the tax that should be paid. That would immediately eliminate these complicated schemes that the chairman and some other members of the committee know have taken place.

The CHAIRMAN: Senator, have you thought that the greatest effect of the new section 138A may be its deterring effect, that people may go to the places where they know what the penalty is, 15 or 20 per cent, rather than attempt to achieve the result and distribute undistributed income without any tax, not realizing what they may pay?

Senator MCCUTCHEON: That was argued for section 138 when it was put in, and it was never used.

The CHAIRMAN: I think that is the only thing, that it has some deterrent effect.

Senator MCCUTCHEON: I do not like it, because to me quite legitimately I may feel that I am entitled to go through certain procedures which are perfectly legal, and the minister may decide in his discretion that I have done something of which he disapproves. Then, instead of paying the 20 per cent rate, I may have to pay 50, 60, 70 or 80 per cent tax.

All the minister has to do to solve my problem is to put in a proviso and to limit the rate of tax. You will note that I can do this thing in perfectly good faith Mr. Chairman. I do not want to go back to my personal example but I can redeem, say, my preferred shares in my children's company in perfectly good faith, strip all of its surplus, and within the wording of this language I may pay a very high rate of tax.

Hon. Mr. GORDON: I was going to say that the whole purpose of this section was to prevent people in the future—

Senator MCCUTCHEON: To what?

Hon. Mr. GORDON: To prevent people in future from doing the kinds of thing that you suggest and that I agree that you can do now, because you set your affairs up in such a way that would permit this. When you say that this particular clause would interfere with you—I find it difficult to get away from talking about your personal affairs, because you are quoting them in your examples. This is not retroactive, and it does not apply to situations that have already been created by transactions entered into previous to the 13th June 1963.

Senator MCCUTCHEON: I am not suggesting that at all. I am suggesting that scores of family settlements have been set up.

Hon. Mr. GORDON: And they are all right.

Senator MCCUTCHEON: No, they are not because they have not taken the last step.

Hon. Mr. GORDON: With respect, Senator, the provision is the first step and not the last step. That is the controlling factor in this.

Senator McCUTCHEON: Now, Mr. Chairman, is the minister saying that having set up a company with this kind of capitalization, and so on, that from here out I am home free? Then I would withdraw some objections, but I don't think he is saying that, and I don't think his officials are advising him that that is what he should say.

Hon. Mr. GORDON: I think it would be presumptuous of me to offer legal advise to Senator McCutcheon, even if he is a retired or ex-lawyer. I think I can find the words here—these amounts would be taxable as part of a transaction effected after June 13, 1963, or as part of a series of transactions, each of which was or is to be effected after that date. Now there were a number of points raised along the same lines that you seem to be concerned about. As I am aware we agreed in the Commons to an amendment, that is incorporated here, to take care of it.

Senator McCUTCHEON: The amendment that went through in the Commons dealt with how to make it more clear with regard to the rights of appeal.

The CHAIRMAN: The amendment dealt with the question of where the opinion of the minister applied. It was set up too early in the section.

Senator McCUTCHEON: It affected the right of appeal too. However let us get away from the personal examples.

Hon. Mr. GORDON: I would like to leave out the personal examples, because there are others. The amendment was to make it absolutely crystal clear that everyone of the transactions had to take place after the 13th June to fall under this section.

Senator McCUTCHEON: Let us assume they took place after the 13th June.

The CHAIRMAN: Then some of the illustrations you mention would not be affected.

Senator McCUTCHEON: They would be affected.

The CHAIRMAN: You have created the redeemable preferred shares before the 13 June.

Senator McCUTCHEON: Then I shall retain you, Mr. Chairman, because I would not interpret the section in that way. What is the minister's objection? He has statutory provisions for this so-called dividend stripping now. This is, I assume, to take care of people who bypass his statutory provisions in a manner which he considers improper. I dislike using that word "improper" because it is in section 138 and I understand it presents some difficulty. However I use it loosely. Why does he object to putting a maximum tax rate? He applies several different rates and I suggest he put a maximum of 20 per cent.

Hon. Mr. GORDON: I thought you said it could be 80 per cent.

Senator McCUTCHEON: Your former partner suggested that people were in a complete fog as to how this section stands; that no tax at all might be paid or 80 per cent might be paid.

Hon. Mr. GORDON: I read the transcript and I wasn't sure of what he was trying to say.

Senator McCUTCHEON: I am saying you have statutory provision in the act now to deal with dividend stripping. This is to prevent people accomplishing dividend stripping outside those sections and paying no tax. I say, in all fairness let us put a 20 per cent limit. The way it is now, as Mr. Little pointed out, an individual in a higher tax bracket, if the minister exercises his discretion against him, might pay 80 per cent.

The CHAIRMAN: As the minister suggested, as I think he has, this is intended to have a deterrent effect. If they are going to attempt to get through an escape hatch and pay no tax, then here is the deterrent.

Senator McCUTCHEON: Mr. Chairman, we would like to hear you speaking on the other side of the case.

The CHAIRMAN: I am not speaking on either side of the case.

Senator McCUTCHEON: It seems we are talking about a law which has a deterrent without any intention of its being enforced. I have seen that kind of legislation before, there is something of that kind in the combines act today.

Hon. Mr. GORDON: You won out on that one, senator.

Senator McCUTCHEON: Why will the minister not put a 20 per cent limitation on the tax?

The CHAIRMAN: I gather from the minister's attitude he is not agreeable to that.

Senator McCUTCHEON: Well, anyway, I have expressed my view.

The CHAIRMAN: That is section 26; shall it carry?

Some Hon. SENATORS: Carried.

Senator McCUTCHEON: On division.

The CHAIRMAN: Section 28. We reserved that this morning in view of the question that was put as to how the department could operate under section 28 between now and, say, the next budget date without doing injustice to some cases that would or should otherwise qualify with the degree of Canadian ownership. You were going to confer with the officials in the Department of Justice, Mr. Minister. Are you ready to deal with this matter now?

Hon. Mr. GORDON: Yes; I think there is a way to handle most of the cases, I cannot say all of the cases because we have not got them, and until we get them it is pretty hard to make general observations that will necessarily stick. I spent the time between 11.30, when I left the committee, until about half past one with Mr. Thorson of the Department of Justice, and Mr. Calof, solicitor to the treasury, and other assistants of the Department of Finance and the Department of National Revenue who are here at the back of the room, to see if we could come up with a formula that could meet the points raised not only this morning but in the deliberations of the committee last week. I should say these draftsmen are familiar with the cases of Petrofina and Miron and the case of a company that was incorporated under a special act of one of the provincial legislatures. But they would like to know the particulars, the specifics, of any other cases before they can come up with firm proposals for dealing with this matter in a final way. They are afraid that without this additional experience and without having the particulars of other cases, because I am sure there are other cases and I am sure we will hear about them, but without knowing about them they cannot propose changes that would not create new difficulties and they would have to deal with them again. In other words it would be better to be careful and to be sure than to act precipitously so far as a new amendment is concerned. Now in the meantime we think that the case, and I think it was a hypothetical case that Senator McCutcheon mentioned, of a Canadian company wholly owned in Canada which might not qualify because of the wording of the first of these subclauses A—

Senator McCUTCHEON: That was a specific case, Mr. Minister, and I will give you the details.

Hon. Mr. GORDON: We haven't got the details, and this makes it difficult for our draftsmen to try to find a formula without all the facts of specific cases. But in that specific case we think it can be taken care of in the regulations still to be drafted dealing with capital cost allowances. Clearly that particular case that you mention should qualify.

Senator McCUTCHEON: The only points I raised were in regard to capital cost allowance and in regard to withholding tax.

Hon. Mr. GORDON: I think we decided that case or cases like it could be taken care of in the regulations on capital cost allowances.

Now, as to the withholding tax, the differential in the rates, and using Petrofina as an example, if the company qualifies, or any similar company qualifies, under any amendment that may be introduced in the next budget then the shareholders would be automatically entitled to a refund so that in that situation also there would be no hardship.

There are one or two other things I would like to mention that were raised. There was a question, although I don't think anybody was very enthusiastic or hopeful about it, that perhaps section 117 of the act might be helpful in this connection. The opinion of the Department of Justice, as I am sure most of you would expect, is that that section could not be used.

There was also a suggestion that some sort of interpretative provision could be given in connection with this section, and after thinking about it and discussing it with the officials we were rather concerned that this really would be giving a ministerial discretion in the broadest possible sense. We did not see how it could be limited or controlled in any way, and as honourable senators and everybody else is against the principle of ministerial discretion it seemed to me that this would not be something that you would wish to seriously consider.

The CHAIRMAN: Since I made the suggestion, Mr. Minister, and I was trying to do so to accomplish a great good for a short time, I was ready to be very broadminded for a very short time.

Hon. Mr. GORDON: I appreciate your broadmindedness, Mr. Chairman, but perhaps the suggestion of the officials that the regulations dealing with capital cost allowances will take care of what I think, and here I agree with Senator McCutcheon, would be a real injustice.

Senator McCUTCHEON: I have known the chairman for 30 years and he has been broadminded all of that time, and that is not a short time.

The CHAIRMAN: Shall section 28 carry?

Agreed.

The CHAIRMAN: Shall I report the bill without amendment?

Agreed.

Senator McCUTCHEON: On division.

Senator THORVALDSON: Mr. Chairman, it has been our custom to thank the minister for appearing before us, and I think we all do.

The committee adjourned.

Canada. Parliament. Senate.
Standing Committee on Banking
and Commerce
Proceedings